

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Application for Certification	)	
for the Tesla Power Project	)	Docket No.
by Florida Power and Light	)	01-AFC-21
_____	)	

VFW POST #1537  
MEETING HALL  
430 WEST GRANT LINE ROAD  
TRACY, CALIFORNIA

WEDNESDAY, SEPTEMBER 10, 2003

1:05 P.M.

Reported by:  
James Ramos  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBER PRESENT

John L. Geesman, Commissioner  
Presiding Member

HEARING OFFICER AND ADVISOR

Susan Gefter, Hearing Officer

STAFF PRESENT

Darcie L. Houck, Staff Counsel

Jack Caswell, Staff Project Manager

Alvin Greenberg, Ph.D.

Alameda County Fire Department  
Bill McCammon, Fire Chief  
Richard Brown, Assistant Chief, Haz Mat Specialist

Lawrence Livermore  
Randy Bradley, Fire Chief

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

REPRESENTING THE APPLICANT

Scott A. Galati, Esq.  
Galati & Blek, LLP

Florida Power & Light Energy  
Scott A. Busa, Project Director

Tetra Tech FW, Inc.  
Dwight R. Mudry, Ph.D., Consulting Scientist  
Lida Moussavian, Principal Engineering Project  
Manager  
Duane McCloud, Project Engineer

Fluor Corporation  
Zoran Rausavljevich, Technical Services

INTERVENORS PRESENT

Robert Sarvey

Michael Boyd, President  
Californians for Renewable Energy (CARE)

Chief Larry Fragosa, City of Tracy

ALSO APPEARING

Susan Sarvey  
Clean Air for Citizens/Legal Equality

Irene Sundberg

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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## P R O C E E D I N G S

1:05 p.m.

PRESIDING MEMBER GEESMAN: Good

afternoon. I am John Geesman, one of five members of the morning, everyone and welcome to the March 21st regular meeting of the California Energy Commission. I'm the assigned presiding commissioner for this proceeding. This is the first of several days of evidentiary hearings on the Florida Power and Light Company's application for certification of the Tesla Power Project.

Before I go any further, let me introduce Susan Gefter, the hearing officer on the case. Let me turn it to Applicant to make your introductions as well.

APPLICANT COUNSEL GALATI: Thank you.

Good afternoon. My name is Scott Galati and I represent Midway Power LLC who is the Applicant for the Tesla Power Project. On my left is the project manager, Scott Busa, and on my right is project engineer, Duane McCloud. In the audience we have several supporting characters whom you will be seeing today. In addition, the vice president of development is Darryl Grant and the general counsel is Harris Rosen. We also have



1 Lady Bodi and Mack Hay here as well and members  
2 from Tetra Tech Foster Wheeler and Duke-Fluor  
3 Daniel, who are supporting the project.

4 HEARING OFFICER GEFTER: And,  
5 Mr. Galati, have you given those names to the  
6 reporter so he can spell them correctly?

7 APPLICANT COUNSEL GALATI: I have given  
8 some of those, who intend to testify. We'll drop  
9 off cards and make sure that that's done.

10 HEARING OFFICER GEFTER: Thank you.

11 PRESIDING COMMITTEE MEMBER GEESMAN:  
12 Staff?

13 STAFF COUNSEL HOUCK: Good afternoon.  
14 I'm Darcie Houck, staff counsel for Energy  
15 Commission staff, and to my left is Jack Caswell,  
16 the project manager. We also have Alvin  
17 Greenberg, who will be testifying later today, and  
18 I think that's it for right now.

19 PRESIDING COMMITTEE MEMBER GEESMAN: Why  
20 don't we turn it over to you, Ms. Gefter.

21 HEARING OFFICER GEFTER: We also have an  
22 Intervenor, Mr. Sarvey.

23 INTERVENOR SARVEY: Yes, Bob Sarvey,  
24 representing my asthmatic family. Thank you.

25 HEARING OFFICER GEFTER: And do you know

1 if Mr. Boyd from CARE will be here today?

2 INTERVENOR SARVEY: Yes, he will.

3 HEARING OFFICER GEFTER: Okay. We'll  
4 introduce him when he gets here.

5 Are there any representatives from CURE  
6 here? CURE has intervened as well. Okay, thank  
7 you.

8 Are the representatives from any of the  
9 local agencies here at this time? Okay, where --  
10 Are you from a local agency, governmental agency?  
11 Okay. As they come in, we'll ask you to introduce  
12 them to us as well.

13 Our Public Adviser, Roberta Mendonca, is  
14 here, and just to give a little background on  
15 Roberta's role, this advocacy process is a  
16 public process. Members of the public and  
17 interested community organizations are invited to  
18 participate and express their views on matters  
19 related to the project.

20 Ms. Mendonca is available to assist any  
21 members of the public in participating, and she  
22 has little blue cards that she has available that  
23 you can fill out. She'll give us those cards and  
24 we'll call on you later today.

25 Ms. Mendonca, do you have some comments

1       you'd like to offer?

2               PUBLIC ADVISER MENDONCA: Thank you. I  
3       would like to summarize very briefly the outreach  
4       that the public advisor did for this case.  
5       Beginning back when the application was received,  
6       we began scoping and determined that certain areas  
7       in the community would be appropriate contact  
8       points for my office. We sent out copies of the  
9       application for certification to three libraries,  
10      the Livermore Civic Center Library, the Brentwood  
11      Branch Library, and the Tracy Branch Library.

12              And included in that library packet was  
13      a one-page project description which would be easy  
14      to summarize what was going on in the project, a  
15      poster that the librarian could post announcing  
16      key contacts for the case, and a poster that could  
17      be posted telling where in the library the AFC  
18      could be located.

19              We contacted during December 2001 local  
20      schools, the Mountainhouse Elementary School, and  
21      requested approval to distribute flyers announcing  
22      the informational hearing on this project. We  
23      sent 75 copies of the project description to the  
24      Mountainhouse School District for distribution.

25              We sent out 17,990 copies of a newspaper

1 insert to the Tri-Valley Herald newspaper, and the  
2 insert gave contact information as well as the  
3 time, date and location of the informational  
4 hearing. And because there was a strong interest  
5 in the three projects in this area, my office also  
6 notified those people that had been participating  
7 in the East Altamonte and the GFW Tracy, and  
8 included in that informational announcement was a  
9 map with the location of the three projects.

10 In addition, my office has been  
11 available to those that have intervened in the  
12 case and, of course, is available to assist the  
13 public here today. Thank you.

14 HEARING OFFICER GEFTER: Thank you.  
15 Let's go off the record.

16 (Thereupon a recess was taken.)

17 HEARING OFFICER GEFTER: Today we will  
18 take evidence on the uncontested topics in this  
19 case. We scheduled testimony on the contested  
20 topic of Fire Protection this evening at 6:00  
21 p.m., so interested community members may  
22 participate, and we expect the representatives of  
23 the Tracy Fire Department as well as from the  
24 Alameda County Fire Department to be here to  
25 discuss the issues.

1           Now, in terms of the schedule for the  
2           evidentiary hearings, we are scheduled today,  
3           tomorrow, Friday, and next Thursday here in Tracy.  
4           The parties stipulated to a revised topic and  
5           witness schedule and we reflected that stipulation  
6           in the notice of revised hearing schedule that was  
7           issued last week.

8           Tomorrow we will hear testimony on Land  
9           Use, Biology and Water Resources. Then on Friday  
10          we will take Intervenor CARES. That's Mike Boyd  
11          who is not here yet today. He wants to present  
12          direct testimony on Air Quality on Friday.

13          Also on Friday, if we don't complete the  
14          topics that we're going to hear today and  
15          tomorrow, we will also leave some time on Friday  
16          to take that testimony.

17          Mr. Boyd, on the behalf of CARE, has  
18          withdrawn his request to present direct testimony  
19          on Cultural Resources and Socioeconomics;  
20          therefore, we will not hear direct testimony from  
21          the Intervenor on Cultural today or on  
22          Socioeconomics on Friday. I expect that on the  
23          following week, on Thursday the 18th, Mr. Sarvey  
24          has indicated an intent to cross-examine witnesses  
25          on the Socioeconomics topic; is that correct?

1 INTERVENOR SARVEY: Correct.

2 HEARING OFFICER GEFTER: Okay. At this  
3 time we will entertain motions from the parties  
4 before we proceed with actual testimony.

5 Mr. Galati.

6 APPLICANT COUNSEL GALATI: At this time  
7 we would like to make a motion to limit the scope  
8 of Mr. Sarvey's testimony on Friday as an expert  
9 on air quality, to limit the scope to those things  
10 that are within his knowledge. I don't believe  
11 that there has been a demonstration that he can  
12 opine as to modeling techniques and other areas  
13 within air quality.

14 So I would just ask for that limiting  
15 scope, and I can renew those objections on a case-  
16 by-case basis, based on the testimony as it is  
17 heard on Friday.

18 HEARING OFFICER GEFTER: Okay.

19 Staff, do you have any comments on that?

20 STAFF COUNSEL HOUCK: No, and we have no  
21 objections.

22 HEARING OFFICER GEFTER: Okay.

23 Mr. Sarvey is intending to be the witness for  
24 Mr. Boyd on behalf of CARE. Mr. Boyd isn't here.

25 Mr. Sarvey, do you have any comments?

1 INTERVENOR SARVEY: I would just prefer  
2 to deal with the issue on Friday.

3 HEARING OFFICER GEFTER: Well, you can  
4 renew your motion on Friday. Do you have any  
5 other motions?

6 APPLICANT COUNSEL GALATI: I just wanted  
7 to reflect a stipulation between the Applicant and  
8 Staff concerning a portion of the final staff  
9 assessment in Soil and Water Resources that  
10 included a statement of counsel.

11 HEARING OFFICER GEFTER: Okay.

12 APPLICANT COUNSEL GALATI: And since the  
13 final staff assessment is likely to be moved in as  
14 an exhibit, as testimony, Staff and I have agreed  
15 that that portion will not be testimony that is  
16 properly characterized as argument or opinion and,  
17 therefore, is considered to be a brief. We just  
18 wanted that clarification, since we were not  
19 bringing testimony about those particular matters  
20 in the prehearing conference, and we have agreed  
21 to that.

22 HEARING OFFICER GEFTER: Would you  
23 please identify what pages of the final staff  
24 assessment you're referring to, please.

25 STAFF COUNSEL HOUCK: It's on page

1 4.13-26 through 4.13-27. And Staff has no  
2 objections. We were going to request that this  
3 portion of the testimony be withdrawn as we do  
4 concur that we will address all issues related to  
5 the statement of counsel and briefs, and it was  
6 included in our testimony to give context to this  
7 section for the public and other readers to  
8 understand our position.

9 HEARING OFFICER GEFTER: Okay, thank  
10 you. We will accept that stipulation, and the  
11 statement of counsel is removed as testimony from  
12 the FSA as noted at pages 4.13-26 and 4.13-27 and  
13 it will not be considered testimony in this case.

14 Anything else?

15 APPLICANT COUNSEL GALATI: Thank you, I  
16 have no further motions at this time.

17 HEARING OFFICER GEFTER: I noted that  
18 Mr. Boyd from CARE has just arrived. Do you want  
19 to come up here to the table and introduce  
20 yourself?

21 Off the record.

22 (Thereupon a recess was taken.)

23 HEARING OFFICER GEFTER: On the record.

24 INTERVENOR BOYD: Ladies and gentleman,  
25 I am the president of CARE, Californians for



1 Renewable Energy.

2 HEARING OFFICER GEFTER: Mr. Boyd is a  
3 party to the case as an intervenor.

4 At this point, when Mr. Galati made a  
5 motion to limit the scope of Mr. Sarvey's  
6 testimony on air quality, Mr. Boyd was not  
7 present. If you could please reiterate that  
8 motion for Mr. Boyd at this point.

9 APPLICANT COUNSEL GALATI: I wanted to  
10 make a motion that Mr. Sarvey, with respect to air  
11 quality, we have no problem with him testifying to  
12 those things that are within his realm of  
13 experience, but we would be making case-by-case  
14 objections to specific opinions as to modeling  
15 techniques, those kinds of things about which he  
16 is not an expert. And we will make those on a  
17 case-by-case basis on Friday, but I wanted to  
18 bring that to your and others' attention at the  
19 earliest convenient time.

20 INTERVENOR BOYD: We have no problem  
21 with that.

22 HEARING OFFICER GEFTER: Okay, fine.  
23 Staff, do you have any motions you would like to  
24 offer at this time?

25 STAFF COUNSEL HOUCK: No, we do not, but

1 I would request clarification. When you had  
2 mentioned the topics being discussed next Thursday  
3 on the 18th, you indicated that Mr. Sarvey was  
4 going to cross-examine witnesses regarding  
5 Socioeconomics. Is that the Environmental Justice  
6 concerns that deal with public health?

7 HEARING OFFICER GEFTER: That is my  
8 understanding, yes.

9 STAFF COUNSEL HOUCK: So the witness, he  
10 would want to be cross-examining would be  
11 Dr. Alvin Greenberg, not Amanda Stenneck.

12 HEARING OFFICER GEFTER: That's right.

13 STAFF COUNSEL HOUCK: All right.

14 HEARING OFFICER GEFTER: Yes, the  
15 witness that would be testifying on Air and Public  
16 Health on that day would also be available to  
17 answer questions on Environmental Justice and the  
18 Socioeconomics topic.

19 STAFF COUNSEL HOUCK: Thank you.

20 HEARING OFFICER GEFTER: Okay. Yes?

21 APPLICANT COUNSEL GALATI: I guess if I  
22 could have further clarification, we have  
23 witnesses for Socioeconomics who looked at  
24 Socioeconomics. We have witnesses for Air Quality  
25 and Public Health who looked at Environmental

1 Justice issues in those areas. Am I excused from  
2 bringing the Socioeconomics witness as long as my  
3 Public Health and Air Quality witnesses are  
4 available for that area of cross-examination?

5 HEARING OFFICER GEFTER: That is the  
6 intent, yes.

7 APPLICANT COUNSEL GALATI: Okay.  
8 Mr. Sarvey?

9 INTERVENOR SARVEY: As long as the  
10 witnesses are qualified to answer my questions, I  
11 have no objection.

12 APPLICANT COUNSEL GALATI: Just since we  
13 are handling preliminary matters, can I get  
14 some -- Let me explain to you what each witness  
15 has done, and maybe that would be helpful in  
16 helping me decide whether they need to be here.

17 HEARING OFFICER GEFTER: Okay. Well,  
18 let's do that off the record, perhaps.

19 APPLICANT COUNSEL GALATI: Okay.

20 HEARING OFFICER GEFTER: You can decide  
21 which witnesses you need to bring in at that  
22 point. You have several witnesses listed, and so  
23 if you bring one or two of those, that would be  
24 fine. If you're going to bring a different  
25 witness in that's not already been identified,

1       then we might have some questions.

2               So let's move on right now with other  
3 matters.

4               APPLICANT COUNSEL GALATI:   Okay.

5               HEARING OFFICER GEFTER:   And the next  
6 matter, if there are no other motions, and let me  
7 ask the Intervenor whether either of you have a  
8 motion you wish to make now?

9               INTERVENOR SARVEY:   No.

10              HEARING OFFICER GEFTER:   The next issue  
11 is the exhibit list.  I sent out a tentative  
12 exhibit list which incorporated all of the  
13 proposed exhibits from all of the parties.  I  
14 asked the parties to then look through the list  
15 and determine whether any of these documents were  
16 duplicative and could we eliminate some of them,  
17 and also whether there were any objections, at  
18 least at this point, to any of the proposed  
19 exhibits.

20              It doesn't preclude parties from  
21 objecting to exhibits when we get to the actual  
22 topic area, but I wanted to at this point start  
23 the discussion.

24              Mr. Galati, I'm going to start with you.  
25 Have you had time to look at the exhibit list and

1 note whether there are any duplicative documents  
2 or any documents that you wish to object to?

3 APPLICANT COUNSEL GALATI: I will  
4 reserve my objections until later, until I find  
5 out what the foundational reasons for some of the  
6 exhibits are. I don't have any objections at this  
7 stage.

8 I would note that it appears that  
9 Exhibit 64(c), which is Staff's exhibit dated  
10 May 20th of 2002, is the same as Applicant's  
11 Exhibit 16, is it? Yes, it's 16, although the  
12 dates are different, but I would ask Staff to meet  
13 with me to identify if those are, in fact,  
14 duplicative.

15 STAFF COUNSEL HOUCK: Okay. It appears  
16 that Staff and Applicant have both submitted the  
17 same exhibits which are letters from the County of  
18 Alameda regarding land use consistency issues.

19 APPLICANT COUNSEL GALATI: That would go  
20 for Exhibit 64(f), which is the resolution, which  
21 is identified as our Exhibit 21.

22 HEARING OFFICER GEFTER: I also -- Just  
23 to have this noted, Staff submitted a series of  
24 letters regarding the land use issue and the  
25 cancellation of the Williamson Act contract as

1 part of their Addendum 2, and a lot of those,  
2 those letters also I think were submitted by the  
3 Applicant as separate exhibits.

4 And for clarity in the record, I would  
5 prefer to have each of those items listed  
6 separately. So perhaps the Applicant and the  
7 Staff can get together and make sure that you have  
8 the same documents, and then we'll just number  
9 them individually as the Applicant -- I think  
10 you've done that with all of the letters, but I'm  
11 not sure that you have the same letters as the  
12 Staff has offered, so perhaps that's something you  
13 can do in a recess.

14 APPLICANT COUNSEL GALATI: Yes, and we  
15 can address that beginning tomorrow when we take  
16 up Land Use. We can maybe start right there and  
17 give you an idea which are the exhibits that we're  
18 both referring to.

19 HEARING OFFICER GEFTER: Okay. Are  
20 there any other duplicative exhibits?

21 INTERVENOR SARVEY: Yeah, I have a  
22 couple of duplications.

23 HEARING OFFICER GEFTER: Okay.

24 INTERVENOR SARVEY: My Exhibit 79 is  
25 Staff's 63, and my Exhibit 81 is Staff's 55, and

1 my Exhibit 97 is the Applicant's 22.

2 HEARING OFFICER GEFTER: I'm sorry, say  
3 the last one again?

4 INTERVENOR SARVEY: My Exhibit 97 is the  
5 Applicant's Exhibit 22.

6 HEARING OFFICER GEFTER: Okay. Well,  
7 what we'll do is we'll eliminate yours, and if  
8 they're already in the record, we'll go with the  
9 earlier numbered ones, and that way you have more  
10 numbers.

11 INTERVENOR SARVEY: That's fine. Sure,  
12 that's great, no problem with me on that.

13 HEARING OFFICER GEFTER: Okay. Anything  
14 else?

15 STAFF COUNSEL HOUCK: Let me look for  
16 the exhibit number. I think both Staff and  
17 Applicant submitted a report on the status of the  
18 Buena Vista shrew, and --

19 APPLICANT COUNSEL GALATI: It's our  
20 Exhibit 151.

21 HEARING OFFICER GEFTER: Yes, and  
22 Staff's Exhibit 58. So between the two of you,  
23 who wants to sponsor it? It looks like 58 is  
24 sponsored by Staff and 151 is sponsored by the  
25 Applicant. Do you want to sponsor it?

1           STAFF COUNSEL HOUCK: We're sponsoring  
2           the U.S. Fish and Wildlife witness, so if  
3           Applicant has no objections, we would agree.

4           HEARING OFFICER GEFTER: Okay. Staff  
5           will sponsor that and we'll take out 151, okay?

6           APPLICANT COUNSEL GALATI: Yes.

7           HEARING OFFICER GEFTER: In terms of  
8           that particular exhibit, and when you bring your  
9           witness you can explain it, but is that document  
10          written by U.S. Fish and Wildlife Service or by a  
11          contractor to U.S. Fish and Wildlife?

12          STAFF COUNSEL HOUCK: It was, I believe,  
13          written by a contractor submitted to the U.S.  
14          Bureau of Reclamation. It is the document that  
15          U.S. Fish and Wildlife Service had provided  
16          earlier on to staff in considering the issue of a  
17          potential impact to the shrew. So it was a  
18          document that was provided and that they have  
19          relied on, but they did not prepare this document.

20          HEARING OFFICER GEFTER: Okay, fine.  
21          We'll discuss it at the time that the witness is  
22          available to testify.

23          Is there anything else in terms of the  
24          exhibits?

25          INTERVENOR SARVEY: Yes, Exhibit 98



1       should be the testimony of Dick Schneider. That  
2       was left off of my list.

3               HEARING OFFICER GEFTER: Okay. And  
4       Mr. Schneider will be testifying on Land Use?

5               INTERVENOR SARVEY: Land Use, that's  
6       correct.

7               HEARING OFFICER GEFTER: Okay. I see  
8       how you define and describe each exhibit. Can you  
9       give me one for Exhibit 98 with respect to  
10      Mr. Schneider's testimony?

11              INTERVENOR SARVEY: Definitely.

12              HEARING OFFICER GEFTER: All right.  
13      Okay, anything else?

14              INTERVENOR SARVEY: I think that's it.

15              HEARING OFFICER GEFTER: All right.  
16      We're going to use this tentative exhibit list as  
17      we go through and take testimony. If there are  
18      any questions as we go through, we'll deal with  
19      them at that moment.

20              Do any of the parties have questions as  
21      to the format for presenting testimony today?

22              APPLICANT COUNSEL GALATI: Would you  
23      like us to move in exhibits at the end of each  
24      day, at the end of the topic, or at the end of the  
25      hearings?

1 HEARING OFFICER GEFTER: At the end of  
2 the topic.

3 APPLICANT COUNSEL GALATI: Thank you.

4 HEARING OFFICER GEFTER: All right. Any  
5 other questions before we begin the topics?

6 All right. Project Description.  
7 Mr. Galati, you go first.

8 APPLICANT COUNSEL GALATI: Thank you.  
9 At this time I'd like to call our Project  
10 Description panel, which includes Scott Busa and  
11 Duane McCloud, if they could please be sworn.

12 HEARING OFFICER GEFTER: Off the record  
13 one minute.

14 (Thereupon a recess was taken.)

15 HEARING OFFICER GEFTER: Mr. Galati.

16 APPLICANT COUNSEL GALATI: Again, if I  
17 could have Mr. Busa and Mr. McCloud sworn.

18 THE REPORTER: Would you stand and raise  
19 your right hands.  
20 Whereupon,

21 SCOTT BUSA and DUANE MCCLOUD  
22 Were called as witnesses herein and, after having  
23 been duly sworn, were examined and testified as  
24 follows:

25 THE REPORTER: The witnesses have been

1 sworn.

2 APPLICANT COUNSEL GALATI: Thank you.

3 DIRECT EXAMINATION

4 BY APPLICANT COUNSEL GALATI:

5 Q Mr. Busa, could you please state and  
6 spell your name for the record, explain to the  
7 Commission who you work for, and briefly summarize  
8 your qualifications and role on the Tesla Power  
9 Project.

10 A My name is Scott Busa, S-c-o-t-t, last  
11 name B-u-s-a. I am a project director with FPL  
12 Energy. FPL Energy is a subsidiary of FPL Group,  
13 of which one of our sister companies is Florida  
14 Power and Light. I just wanted to make that  
15 clarification. FPL Energy is not under Florida  
16 Power and Light, it is a separate company, both of  
17 them under FPL Group. So FPL Energy is the parent  
18 of Midway Power, the sponsor of the project.

19 I have been an employee of FPL Group for  
20 over 14 years. I've worked on various projects in  
21 the environmental licensing and permitting, air  
22 monitoring and testing arenas. I have also done a  
23 good bit of due diligence and environmental  
24 auditing over my career at Florida Power and  
25 Light. For the last two years I have been a

1 project director.

2 I have been with the Tesla project since  
3 the beginning. For the first few months I was the  
4 environmental manager and then took the role of  
5 project manager in July of 2001.

6 Q Mr. McCloud, can you please state your  
7 name, spell it for the record, tell us who you  
8 work for, briefly summarize your qualifications  
9 and state your role in the Tesla Power Project.

10 A My name is Duane McCloud. It's  
11 D-u-a-n-e M-c-C-l-o-u-d. I am functioning as the  
12 project engineer for the Tesla Power Project. I  
13 have also been involved in the project from its  
14 initial inception through the development and  
15 licensing process.

16 I have been with FPL Group for  
17 approximately six years. I have been involved in  
18 power generation on the technical side, including  
19 development, operations, design and project  
20 support for a total of 22 years. I think that's  
21 it.

22 Q Okay, great. At this time I'd like  
23 Mr. Busa to briefly describe the components of the  
24 Tesla Power Project.

25 A I'm going to be referring some to the

1 diagram behind me, just to refresh everyone. I  
2 believe most everyone here has been to the project  
3 site. The project site is a 60-acre parcel, and  
4 on the map behind me, this white box in the  
5 horseshoe shape there. The project itself is an  
6 1120 nominally rated megawatt facility, combined-  
7 cycle gas turbines. There are four gas turbines  
8 associated with the project. It takes up about 30  
9 acres of a 60-acre site.

10 There are a few umbilicals that come out  
11 from the project. Number one is the connection to  
12 the Tesla substation, which is in the lower part  
13 of the photograph here. The Tesla substation is  
14 one of the major conductors of electricity through  
15 Northern California, with lines leading off to  
16 Sacramento and the Bay Area and the San Joaquin  
17 Valley.

18 There is a new connection to be made to  
19 that substation about three-quarters of a mile  
20 long, going from the plant site to the Tesla  
21 substation, and there is also a small relocation  
22 of a line that's entering the Tesla substation  
23 from the north right now and will be moved to the  
24 side of the Tesla substation.

25 Another feature of the project is the

1 purple line here that leads from the PG&E, Pacific  
2 Gas and Electric Tracy maintenance facility. That  
3 is where large gas lines, often referred to as the  
4 "backbone line" for the State of California, run  
5 through the area here. We will tap into the PG&E  
6 line at this point, and a new approximately three-  
7 mile pipeline will be then put from the PG&E yard  
8 over to the Tesla project.

9 The third feature of the project is the  
10 interconnection to the California Aqueduct, the  
11 blue line on the photograph there. Our proposed  
12 water supply will come from the California  
13 Aqueduct as an exchange from Kern County Water  
14 District. A new pumping station would be built  
15 along the aqueduct and turnout, and a new water  
16 line would then be placed along Midway Road  
17 leading down to the project site.

18 In the description of the project, I  
19 want to point out that the project site met all of  
20 the criteria that we were looking for to place a  
21 large power plant project. A couple of things are  
22 key to this: number one, the location to the  
23 Tesla substation. That's sort of our access to  
24 the market with a minimal amount of new  
25 transmission lines to be built there down to the

1 Tesla substation. Essentially, we have property  
2 now adjacent to PG&E's property at the Tesla  
3 substation.

4 Another key in this area here is flat  
5 ground. This is still up in the Altamonte Hills.  
6 There is not a lot of flat ground there, so it was  
7 key for us to find a flat site. Another concern  
8 is neighbors, and the nearest neighbor is about a  
9 mile away, so we don't have any right-next-door  
10 neighbors adjacent to the project site.

11 The site was also identified by staff as  
12 an alternative for the Metcalf facility, so that  
13 brought our attention to this area and this site.  
14 The other thing I want to point out is that we're  
15 close to the load here, meaning that there are a  
16 lot of users of power within 50 miles or so of the  
17 project. That allows for less transmission line  
18 losses and more ability to serve local  
19 municipalities from this site. It is not a highly  
20 residential area, so we're kind of near the load  
21 center but away from large concentrations of  
22 people.

23 The other thing I wanted to point out is  
24 a little bit about the project facilities. It  
25 will take about 23 months to build the project

1 after we give the go-ahead, and in order to do  
2 that, we obviously need a license from the  
3 California Energy Commission and to meet all of  
4 the initial conditions of certification before the  
5 project construction starts.

6 There is a possibility, just assuming  
7 that we go through the licensing process here in  
8 the next few months and that we get a license near  
9 the end of the year with a few months then to  
10 prepare for the project, construction can start at  
11 the earliest in the spring of 2004, which would  
12 put the project on line for the peak summer season  
13 in 2006. So that's our current plan for the  
14 earliest we would be available to produce power.

15 I think that's the general description.  
16 If there are any additional questions on more  
17 detail, Mr. McCloud can handle them.

18 Q Yeah, I would like to ask a couple of  
19 questions on how the project is handling its  
20 wastewater.

21 A The project will be a zero-liquid-  
22 discharge facility; that is, there will be no  
23 wastewater discharge from any process source from  
24 the project. Likewise, the project is designed to  
25 contain all stormwater on site, so there is no



1 liquid discharge coming off of the project. All  
2 of the water going to the plant will be retained  
3 in the plant, reused to the nth degree, as much as  
4 possible, and there will be a zero-liquid-  
5 discharge processing system that converts the suds  
6 that are left over from, that are inherent to the  
7 water to be removed from the site as a sludge.

8 Q And with respect to the air emissions  
9 and controls, could you briefly summarize whether  
10 the project would be in compliance with BACT  
11 requirements and what controls would be on the  
12 project with respect to air emissions?

13 A The proposal is we would use enough CR  
14 catalysts for NOx control and an oxidation  
15 catalyst for control of carbon monoxide and  
16 volatile organics. The analysis that was done in  
17 the AFC and has been reviewed by the CEC I would  
18 believe that this represents BACT, or best  
19 available control technology.

20 Q Mr. Busa, are you familiar with  
21 Exhibit 31, which is the testimony of yourself and  
22 Duane McCloud docketed on August 29th, 2003?

23 A Yes, I am familiar with that.

24 Q And do you have any changes or  
25 modifications to that testimony?

1           A     No, I do not.

2           APPLICANT COUNSEL GALATI:  At this time,  
3     Ms. Gefter, I would like to identify for you that,  
4     in addition to Exhibit 31, Mr. Busa and  
5     Mr. McCloud are sponsoring a portion of Exhibit 1,  
6     which is the AFC; specifically, sections one, two,  
7     and three, and appendices A through F.  And I  
8     would like at this time to ask for Exhibit 31 and  
9     those portions of Exhibit 1 moved into evidence.

10          HEARING OFFICER GEFTER:  Any objection?

11          STAFF COUNSEL HOUCK:  No objection.

12          INTERVENOR SARVEY:  No objection.

13          HEARING OFFICER GEFTER:  Okay.

14     Exhibit 31 has been received into the record as  
15     well as portions of Exhibit 1 as noted by  
16     Mr. Galati are also received into the record.

17           (Thereupon Exhibit 31 and portions of  
18     Exhibit 1 were received into evidence.)

19          HEARING OFFICER GEFTER:  I also want to  
20     indicate that at the end of all of the evidentiary  
21     hearings, I will ask Mr. Galati to move Exhibit 1  
22     in its entirety into the record, just in case  
23     you've missed any sections.

24          APPLICANT COUNSEL GALATI:  Okay.  Thank  
25     you, and with that, my witnesses are available for

1 cross-examination.

2 HEARING OFFICER GEFTER: Does Staff have  
3 any cross?

4 STAFF COUNSEL HOUCK: No, we have no  
5 questions at this time.

6 HEARING OFFICER GEFTER: Mr. Sarvey?

7 INTERVENOR SARVEY: Yeah, I have a  
8 couple of questions.

9 CROSS-EXAMINATION

10 BY INTERVENOR SARVEY:

11 Q You mentioned your load center. Where  
12 do you anticipate the majority of your load will  
13 be located?

14 A At this time there are no contracts for  
15 power. There are a number of municipalities.  
16 PG&E, for example, is a possibility to sell power  
17 to. There are issues with bankruptcy right now  
18 that have kept them occupied, so there have not  
19 been a lot of discussions with PG&E.

20 That would really be something that we  
21 will push once we get the license to see who would  
22 actually purchase the power.

23 Q And you also mentioned voltage drop.  
24 Can you give us an example of what you feel the  
25 average voltage drop for your facility might be to

1 your load?

2 A Actually, I'm not an expert in the  
3 voltage drop area. We might have to wait until we  
4 get somebody -- unless Duane can answer that.

5 A [Witness McCloud] Again, obviously the  
6 function of where we're going to, no, I can't  
7 answer that, that's largely functional as to what  
8 voltage transmission line you're going over. But  
9 no, I cannot answer that.

10 Q From your experience, do you have any  
11 state averages for most facilities that that would  
12 be or any other facilities that you've worked on,  
13 what the average might be?

14 A No, I don't. With relationship to  
15 voltage drop and the location, and again, I'm  
16 going to qualify this by acknowledging that the  
17 way this is considered is somewhat under review  
18 right now in the State of California. One of the  
19 things we liked about the site was the initial  
20 evaluation that was done by PG&E assigned this  
21 location a generator meter multiplier that was  
22 above one.

23 What that roughly means is that the  
24 value of a megawatt power generator at this  
25 location exceeded the average as far as generation

1 goes in the existing facilities located throughout  
2 the state. So this was kind of a, for lack of a  
3 better term in generation, a bonus site where you  
4 actually got a bonus for generating at this  
5 location.

6 Q So the voltage drop would be an unknown  
7 variable at this point, then?

8 A The voltage drop is an unknown variable.

9 Q All right.

10 A The only thing the GMM reflects is the  
11 relationship to the overall California system. It  
12 is a better-than-average site.

13 Q And is there a number that the GMM  
14 provides as far as average for voltage drop?

15 A No, there is not a voltage drop  
16 calculation.

17 Q Okay. One more question: You mentioned  
18 that you met all of the requirements for BACT.  
19 BACT for CO is two parts per million: Does this  
20 project intend to adopt it?

21 APPLICANT COUNSEL GALATI: I would  
22 object at this time with Mr. Sarvey identifying  
23 what BACT is. If he wants to ask whether or not  
24 we're meeting BACT, that's fine. But that's an  
25 evidentiary question that he can present evidence

1 as to what he believes BACT to be.

2 HEARING OFFICER GEFTER: If you could  
3 rephrase your question.

4 BY INTERVENOR SARVEY:

5 Q Does this project intend to adopt 2ppm  
6 for CO as BACT?

7 APPLICANT COUNSEL GALATI: If you could  
8 leave off "as BACT," he can answer the question.

9 BY INTERVENOR SARVEY:

10 Q Do you intend to adopt 2ppm for CO as a  
11 condition of this project?

12 A No, we do not.

13 INTERVENOR SARVEY: Thank you. That's  
14 all.

15 HEARING OFFICER GEFTER: Mr. Boyd?

16 MR. BOYD: I just had one clarification  
17 question.

18 CROSS-EXAMINATION

19 BY INTERVENOR BOYD:

20 Q Mr. Busa, you had raised the issue of  
21 the different corporate entities that, which  
22 you're not, specifically the corporation referred  
23 to as Florida Power and Light Energy is named in  
24 the Federal Energy Regulatory proceedings under  
25 what's called a show-cause order, and their docket

1 is EL-03155. And that's under another, they have  
2 a group of show-cause orders under what they call  
3 the Gaming Order, American Electric Power or  
4 something like that is the name, the company.

5 But what I'm trying to clarify is, in  
6 fact, that show-cause order is against your firm  
7 or a -- what's the relationship between you guys  
8 and the entity that the show-cause order is  
9 against, if you know?

10 APPLICANT COUNSEL GALATI: I'll let  
11 Mr. Busa answer the question with this admonition  
12 and objection that the relevance to an order to  
13 show-cause here, I fail to see the relevance in  
14 this particular matter.

15 But with respect to the company  
16 structure, Mr. Busa can explain how the company  
17 structure is, but I object to any relevance as to  
18 another FERC proceeding being discussed in the  
19 Energy Commission process.

20 MR. BOYD: Then can I state the  
21 relevance? The relevance has to do with whether  
22 or not you guys are going to be able to operate  
23 and sell your electricity at market-based rates or  
24 cost-based rates. Clearly, if there is a show-  
25 cause order against you, there is a possibility

1       that that authority to sell at market-base rates  
2       could be revoked, as was done with Enron.

3               So the question is relevant to the  
4       feasibility of the project, as far as I'm  
5       concerned, because if you guys can't sell at  
6       market-based rates, is it really feasible anymore?

7               APPLICANT COUNSEL GALATI:  If I could  
8       respond, my response would be that he clearly  
9       could argue that in a brief, that it's a waste of  
10      time to issue this license.  But I don't believe  
11      that it's any finding of fact or evidentiary  
12      finding that's necessary in the proceeding.

13              HEARING OFFICER GEFTER:  Off the record.

14              (Thereupon a recess was taken.)

15              HEARING OFFICER GEFTER:  Mr. Galati,  
16      with respect to your concern about the relevance  
17      of the question related to the FERC proceeding,  
18      information relating to corporate structure is  
19      relevant to this proceeding.  With respect to the  
20      order of show-cause proceeding at FERC, it is  
21      still in process, there hasn't been any decision,  
22      and it doesn't particularly affect this proceeding  
23      at this time.

24              So your objection regarding relevance is  
25      granted in part.



1           APPLICANT COUNSEL GALATI:   So Mr. Busa  
2           should be directed to go ahead and answer the  
3           question as to what is the corporate structure?

4           HEARING OFFICER GEFTER:   Yes.

5           BY INTERVENOR BOYD:

6           Q     Yes?

7           A     The parent company is FPL Group.  Under  
8           FPL Group there are basically two branches:  
9           Florida Power and Light is a utility back in the  
10          State of Florida and FPL Energy is the merchant  
11          power companies that we serve a number of states  
12          under, and Midway Power falls under FPL Energy.

13          INTERVENOR BOYD:  Okay.  That's all I  
14          have.

15          HEARING OFFICER GEFTER:  And when you  
16          say FPL Group and FPL Energy, is Florida Power and  
17          Light, is that the title or is it just FPL?

18          WITNESS BUSA:  No, it's by the letters  
19          only, it's FPL Energy, not Florida Power and Light  
20          Energy.

21          HEARING OFFICER GEFTER:  Okay.  And when  
22          you say FPL Group, is that Florida Power and Light  
23          Group or is it FPL Group?

24          WITNESS BUSA:  No, that's by the letters  
25          also, FPL Group.

1 HEARING OFFICER GEFTER: All right.

2 INTERVENOR BOYD: I guess you can see  
3 why I would be confused.

4 HEARING OFFICER GEFTER: I have a  
5 question with respect to a comment that Mr. Busa  
6 made that the nearest sensitive residential areas  
7 are about a mile from the site. There is a public  
8 comment that I received, it was in our dockets,  
9 from Maryanne and Gordon Griffith. They live on  
10 Midway Road. I don't know if you saw that.

11 WITNESS BUSA: Yes, they're here.

12 HEARING OFFICER GEFTER: And they're  
13 here? Okay. And they indicate that their  
14 property is just 180 feet south of the proposed  
15 plant, or the way they put it is their south  
16 property line is 850 feet from the proposed power  
17 plant site. And that is inconsistent with what  
18 you stated about the nearest residence.

19 WITNESS BUSA: I believe that, if I  
20 understand correctly, the comment is their  
21 property line, because they own a number of acres  
22 of property around the project site and in the  
23 Altamonte Pass area. I was referring to the  
24 residence itself.

25 INTERVENOR SARVEY: Can we get some

1 clarification on how far the residence is?

2 HEARING OFFICER GEFTER: Can you give us  
3 the exact distance between the --

4 WITNESS BUSA: I can't give you the  
5 exact, just I know that that was evaluated in the  
6 Noise study. Duane might be able to --

7 WITNESS MCCLOUD: I can concur that it's  
8 approximately a mile, but I don't know the exact  
9 footage, no.

10 HEARING OFFICER GEFTER: And the nearest  
11 residence is the Griffith residence; is that what  
12 you're calculating?

13 WITNESS BUSA: Yes, that's what I  
14 understand.

15 HEARING OFFICER GEFTER: The other  
16 question I had in this was a response that you had  
17 to I believe it was Mr. Sarvey's question where  
18 you mentioned something about a bonus for  
19 generating at this location. What does that refer  
20 to? A voltage bonus, is that what you mean?

21 WITNESS BUSA: No, under the, and I  
22 believe it's still existing today, structure, if  
23 you generate at a certain location a unit of  
24 electricity, a megawatt of power, a kilowatt of  
25 power, depending upon where that location is with

1       respect to the California Grid, it's a function of  
2       how far your generation is from load.  There are  
3       places where you're far enough away that the  
4       voltage drop is essentially worse than the  
5       statewide average -- excuse me, the power drop is  
6       worse than the statewide average, and there are  
7       places where it's above the average.

8                 In the case of our location, it was  
9       considered to be above the average; that is, it's  
10      a -- with respect to typical generation and  
11      typical load, this was a better-than-average  
12      location.

13                HEARING OFFICER GEFTER:  Okay.  I think  
14      we're ready to leave Project Description except  
15      that I want clarification for the remaining topics  
16      in this proceeding as to the actual distance  
17      between the facility and the nearest residence,  
18      and there are also some other residential areas I  
19      think that are identified in Public Health and in  
20      Noise.  And I believe there are a few other  
21      topics -- of course, Air Quality.

22                So we need to get some specific  
23      distances and locations relative to the actual  
24      facility.  And again, I want the distance, not  
25      just from the facility fence line, from the actual

1 facility itself to the residences. Because I  
2 think that it's somewhat inconsistent, at least  
3 from what I've seen in the record, as to those  
4 actual measurements.

5 APPLICANT COUNSEL GALATI: Okay. We  
6 will strive to do that. Some of those topics,  
7 they're uncontested and we're doing them by  
8 declaration, but we'll try to modify our testimony  
9 if we can to make that clear.

10 HEARING OFFICER GEFTER: I would  
11 appreciate that, thank you.

12 All right. We're closing Project  
13 Description and our next topic is Facility Design.

14 APPLICANT COUNSEL GALATI: I would  
15 please ask the court reporter to swear in Zoran  
16 Rausavljevich, please.

17 HEARING OFFICER GEFTER: And I'll ask  
18 the witness to spell his last name for us.

19 THE REPORTER: Would you please stand  
20 and raise your right hand to be sworn.  
21 Whereupon,

22 ZORAN RAUSAVLJEVICH  
23 Was called as a witness herein and, after having  
24 been duly sworn, was examined and testified as  
25 follows:

1 THE REPORTER: The witness is sworn.

2 THE WITNESS: The spelling is easy. The  
3 pronunciation is difficult.

4 (Laughter.)

5 THE WITNESS: The first name is spelled  
6 Z-o-r-a-n. It is pronounced Zoran. The last name  
7 is spelled R-a-u-s-a-v-l-j-e-v-i-c-h. It's  
8 pronounced Rausavljevich.

9 DIRECT EXAMINATION

10 BY APPLICANT COUNSEL GALATI:

11 Q Mr. Rausavljevich, could you please  
12 summarize who you work for, what your  
13 qualifications are, and what your role is on the  
14 Tesla Power Project.

15 A I am employed by Fluor Corporation and I  
16 was assigned about six years ago to work for Duke-  
17 Fluor Daniel partnership between Duke Energy and  
18 Fluor Corporation. And part of one of the  
19 assignments was to manage the technical services  
20 provided for Tesla Power Project. We were  
21 specifically asked to provide a preliminary design  
22 of the facility and assist with other technical  
23 data regarding environmental concerns and issues.

24 So my job was essentially to coordinate  
25 and manage the various technical disciplines

1 within Duke Fluor Daniel to provide this  
2 information.

3 Q Mr. McCloud, are you familiar with  
4 Exhibit 32, which is your previously filed  
5 testimony of yourself and Mr. Rausavljevich  
6 entitled Facility Design?

7 A [Witness McCloud] Yes, I am.

8 Q I'd like to point out that this also  
9 includes Power Plant Reliability and Efficiency;  
10 is that correct?

11 A That is correct.

12 Q Do you have any changes or modifications  
13 to that testimony?

14 A No, I do not.

15 APPLICANT COUNSEL GALATI: At this time  
16 I'd like to identify that that testimony includes  
17 sponsoring additional exhibits, Ms. Gefter. That  
18 is a portion of Exhibit 1 of the AFC;  
19 specifically, section 1, section 3.1 through 3.5,  
20 and sections 3.7 through 3.12; sections 4.1  
21 through 4.5 and section 6. A portion of Exhibit  
22 3, responses to first set of CEC data requests,  
23 specifically response numbers 111, 139 through  
24 174, and 239 through 253. And Exhibit 4, response  
25 to second set of CEC data requests, specifically

1 response numbers 260 and 268.

2 And at this time I'd ask for those  
3 exhibits to be moved in, along with Exhibit 32,  
4 into evidence.

5 HEARING OFFICER GEFTER: Any objection?

6 STAFF COUNSEL HOUCK: No objection.

7 INTERVENOR SARVEY: No objection.

8 INTERVENOR BOYD: No objection.

9 HEARING OFFICER GEFTER: Mr. Boyd also  
10 says no. He's standing in the back.

11 Exhibit 32 and the portions of Exhibit 1  
12 as well as the other exhibits listed by Mr. Galati  
13 are received into the record.

14 (Thereupon Exhibit 32 and portions of  
15 Exhibit 1 were received into evidence.)

16 HEARING OFFICER GEFTER: And,  
17 Mr. Galati, you're indicating that this testimony  
18 refers to Facility Design, Power Plant Reliability  
19 and Efficiency? This is all of your testimony on  
20 those topics; is that correct?

21 APPLICANT COUNSEL GALATI: Yes, that's  
22 correct, and my witnesses are testifying by  
23 declaration, but they are available to the  
24 Committee if they have any questions on all three  
25 of those subject matters.



1 HEARING OFFICER GEFTER: All right. Any  
2 cross-examination, Staff?

3 STAFF COUNSEL HOUCK: Staff has no  
4 questions.

5 INTERVENOR SARVEY: I just have one  
6 question.

7 CROSS-EXAMINATION

8 BY INTERVENOR SARVEY:

9 Q On the Fuel Supply and Use, 3.4.5, page  
10 326 --

11 HEARING OFFICER GEFTER: I'm sorry, what  
12 exhibit is that?

13 INTERVENOR SARVEY: Page 326 of the ASE.

14 HEARING OFFICER GEFTER: So that's  
15 Exhibit 1?

16 INTERVENOR SARVEY: Yes.

17 BY INTERVENOR SARVEY:

18 Q Do you have a number for the actual fuel  
19 supply capability of this line that you're tied  
20 into and what percentage Tesla will be considering  
21 of that?

22 A [Witness McCloud] No, I do not. The  
23 final design for that line and final calculations  
24 have not been completed. The process was to file  
25 a request with PG&E for the gas service and give

1       them our requirements. So the only thing I can  
2       verify is that the line that would be constructed  
3       would meet the requirements that we've requested  
4       for the plant.

5           Q     I'm actually speaking as to the line  
6       that you're patching into is what I'm speaking to.

7           A     Oh --

8           A     [Witness Rausavljevich] That information  
9       is available, but is not stated in the AFC. We  
10      can provide that.

11          Q     Yes, I would like to have it if you  
12      could get it to me, please. Thank you.

13                HEARING OFFICER GEFTER: Okay. Are you  
14      referring to the PG&E fuel line?

15                INTERVENOR SARVEY: I'm referring to the  
16      line that the project itself is tying into, the  
17      PG&E natural gas line. I'd like to know the  
18      capacity and the percentage of the capacity that  
19      the project is using.

20                HEARING OFFICER GEFTER: So the  
21      Applicant will provide that information?

22                APPLICANT COUNSEL GALATI: Well, if I  
23      could interject here, we'll certainly try to  
24      provide that, but I would note that this is a  
25      topic that was uncontested, was allowed to be

1 submitted on declaration, was discussed with the  
2 hearing officer. And while I do have some of the  
3 witnesses here, we don't have the appropriate  
4 witnesses to respond to this.

5 I want to just give the Committee notice  
6 that there are many cases where we are having  
7 declarations where we're not anticipating any  
8 cross-examination due to what was filed in the  
9 prehearing conference. So I don't have witnesses  
10 to answer those questions.

11 HEARING OFFICER GEFTER: Okay. And  
12 that's fine, Mr. Galati, because those individual  
13 questions can be answered in writing at the end of  
14 the hearing. So that any unanswered questions can  
15 be resolved and the Intervenors will have the  
16 information they requested.

17 APPLICANT COUNSEL GALATI: I would just  
18 point out that the time to identify the questions  
19 that they had was at the prehearing conference at  
20 which they identified no questions in this area.

21 HEARING OFFICER GEFTER: You're  
22 absolutely right. I think that you have the right  
23 to make your objection on that ground. And, in  
24 fact, any cross-examination that goes beyond one  
25 or two questions will certainly be cut off.

1 But this is a question that is obviously  
2 not a difficult question to answer, and if you  
3 wouldn't mind writing at the close of the  
4 evidentiary hearings, that would be fine. I'm not  
5 going to leave these topics open; they will be  
6 closed.

7 APPLICANT COUNSEL GALATI: Thank you.

8 HEARING OFFICER GEFTER: Okay. Staff,  
9 do you have direct testimony on this topic?

10 STAFF COUNSEL HOUCK: We don't have  
11 witnesses available and would like to enter into  
12 evidence that portion of the final staff  
13 assessment which is Exhibit Number 51.

14 Would you like me to request that our  
15 description section Facility Design, Reliability  
16 and Efficiency all be dealt with at this time?

17 HEARING OFFICER GEFTER: Yes, let's do  
18 that.

19 STAFF COUNSEL HOUCK: Okay. And does  
20 the Committee prefer that the document in its  
21 entirety be admitted or just these particular  
22 pages?

23 HEARING OFFICER GEFTER: Just identify  
24 the specific portions. At the end of evidentiary  
25 hearings, I'll ask you to move the entire FSA and

1 your addenda into the record. At this point, just  
2 identify the portions of those documents that  
3 refer to these topics.

4 STAFF COUNSEL HOUCK: Okay. We would  
5 ask that the portion of the final staff assessment  
6 dealing with the engineering assessments be  
7 admitted into evidence, and that would be  
8 beginning on page 5.1-1 through page 5.5-25.

9 HEARING OFFICER GEFTER: And also in  
10 your addenda, there are sections dealing with  
11 Reliability and Efficiency?

12 STAFF COUNSEL HOUCK: Yes, there are.

13 HEARING OFFICER GEFTER: You can  
14 identify those as well.

15 STAFF COUNSEL HOUCK: We also have an  
16 additional -- We would ask that the information  
17 provided in our Addendum Number 2 --

18 HEARING OFFICER GEFTER: I believe that  
19 is Exhibit 52?

20 STAFF COUNSEL HOUCK: Yes.

21 APPLICANT COUNSEL GALATI: I believe  
22 that's 52.

23 HEARING OFFICER GEFTER: Fifty-two.

24 STAFF COUNSEL HOUCK: Fifty-two. The  
25 portions relating to Project Description,

1 Efficiency and Reliability, and Exhibits 52 and 51  
2 also be admitted into evidence.

3 We also have an additional summary  
4 prepared by Steve Baker on Power Plant Efficiency  
5 and Gas Supply that the Committee had requested.  
6 And attached to that we have a signed declaration  
7 from Steve Baker. That item is not listed on our  
8 exhibit list, and we would ask that that be  
9 considered Exhibit 157 at this time, or if the  
10 Committee prefers, that --

11 HEARING OFFICER GEFTER: Okay. We'll  
12 have to start Staff on some other numbers,  
13 actually. Let's see, we're going to have to give  
14 you a series of numbers. I started the  
15 Applicant's supplemental exhibits that went beyond  
16 the numbers assigned beginning at 151. Staff  
17 could begin at 125, or why don't we start you at  
18 120, okay?

19 STAFF COUNSEL HOUCK: Okay.

20 HEARING OFFICER GEFTER: So Staff's  
21 Exhibit 120, and do you want to identify that and  
22 give us copies, please.

23 STAFF COUNSEL HOUCK: At this time we  
24 have one copy. I can have copies brought  
25 tomorrow. What we have is entitled Power Plant

1 Efficiency and Gas Supply, and it's the testimony  
2 of Steve Baker, and it's in response to the  
3 questions that the Committee raised at the  
4 prehearing conference. And attached to it is a  
5 second copy of Mr. Baker's resume that is also  
6 attached in Exhibit Number 51, Staff's final staff  
7 assessment, and then a declaration by Mr. Baker is  
8 also attached and signed. And I believe the  
9 original was docketed yesterday.

10 HEARING OFFICER GEFTER: Let's go off  
11 the record.

12 (Thereupon a recess was taken.)

13 HEARING OFFICER GEFTER: Okay,  
14 Ms. Houck, until we get copies so that all of the  
15 parties can see Exhibit 120, it will be kept pend  
16 ruling on it at this point.

17 Is there anything else that you have on  
18 these topics while we're pending getting copies of  
19 Exhibit 120?

20 STAFF COUNSEL HOUCK: At this time, no,  
21 just the areas relevant to those topics in Exhibit  
22 51, 52 and 53 that I stated earlier that we would  
23 ask to be admitted.

24 HEARING OFFICER GEFTER: Okay. Is there  
25 any objection to those portions of Exhibit 51, 52

1 and 53, Staff's testimony regarding the topics of  
2 Facility Design, Power Plant Reliability and Power  
3 Plant Efficiency and Project Description?

4 INTERVENOR SARVEY: Yes, I have an  
5 objection to the Power Plant Efficiency section in  
6 the errata that the Staff provided and also the  
7 document that we're going to be looking at. And  
8 I'd like to know, number one, who prepared the  
9 Power Plant Efficiency section in the FSA,  
10 Addendum Number 2, and --

11 HEARING OFFICER GEFTER: I'm sorry,  
12 that's Exhibit 52?

13 INTERVENOR SARVEY: Fifty-two.

14 HEARING OFFICER GEFTER: Okay.

15 STAFF COUNSEL HOUCK: Are you referring  
16 to Exhibit 54, which was the response to the  
17 questions that the Committee requested from Staff?

18 INTERVENOR SARVEY: I'm referring to the  
19 August 29th, 2003 second addendum to Staff's final  
20 staff assessment.

21 STAFF COUNSEL HOUCK: Okay, that's  
22 Exhibit 53.

23 INTERVENOR SARVEY: Page 14 and 15 are  
24 the two pages of my concern, and then the document  
25 that we haven't yet had an opportunity to look at.



1 HEARING OFFICER GEFTER: Okay. So with  
2 respect to Exhibit 53, those pages, what is your  
3 question?

4 INTERVENOR SARVEY: One, I wanted to  
5 know who prepared them, and two, are they  
6 available to answer some questions on that  
7 preparation since this is essentially new  
8 testimony.

9 STAFF COUNSEL HOUCK: As I stated  
10 earlier, they were prepared by Mr. Steve Baker,  
11 and his resume is in the final staff assessment  
12 and, again, attached to the document that  
13 Ms. Mendonca is copying, and he is not available.  
14 We were responding to questions that the Committee  
15 raised at the prehearing conference and it was my  
16 understanding that this witness did not need to be  
17 available here for testimony.

18 INTERVENOR SARVEY: Can you provide him  
19 later on in the hearing?

20 HEARING OFFICER GEFTER: No, Mr. Sarvey,  
21 this was filed on August 29th, and the deadline  
22 for any rebuttal testimony was September 5th. So  
23 you would have had notice anywhere at that time to  
24 indicate to us whether you needed any of the  
25 witnesses to testify.

1 INTERVENOR SARVEY: Yeah, I don't have  
2 any rebuttal testimony, I just have questions on  
3 the document that we're about to look at and this  
4 testimony here. I wasn't aware that there was a  
5 deadline for additional testimony.

6 HEARING OFFICER GEFTER: There is a  
7 deadline for indicating if you want witnesses to  
8 testify.

9 INTERVENOR SARVEY: Okay. Well, we'll  
10 look at this document and then I do have the  
11 option to ask, then?

12 HEARING OFFICER GEFTER: You may ask  
13 questions and Staff can provide the answers in  
14 writing.

15 INTERVENOR SARVEY: Okay. That would be  
16 great.

17 HEARING OFFICER GEFTER: So what is your  
18 question?

19 INTERVENOR SARVEY: Well, until I see  
20 the other document I don't know if you want to  
21 wait until I have a chance to look at that. Fine.  
22 If not, I can ask the questions I already know on  
23 the supplemental testimony.

24 HEARING OFFICER GEFTER: Ask your  
25 questions.

1 INTERVENOR SARVEY: Okay. Staff makes a  
2 statement on page 15 in answer to question 3 --

3 HEARING OFFICER GEFTER: This is  
4 Exhibit 53.

5 INTERVENOR SARVEY: Yes, and they state  
6 that the bulk of California's existing power  
7 systems is 1960-era utility-built steam boiler  
8 plants. And I was wondering if Staff had a  
9 breakdown on what percentage of those plants were,  
10 their age, what percentage of them are natural  
11 gas, and sort of an analysis of what the Energy  
12 Commission has certified and is now looking,  
13 constructing and looking at applications.

14 HEARING OFFICER GEFTER: Okay, and the  
15 relevance?

16 INTERVENOR SARVEY: The relevance is  
17 essentially they are making a statement here that  
18 most of California's generation is aging and is  
19 going to be soon to be replaced, and probably this  
20 is the topic of a brief, but my understanding is  
21 the Energy Commission has about 8,000 megawatts  
22 under construction, has about 7,500 megawatts that  
23 have been recently constructed and operating, and  
24 another 8,000 megawatts that are currently being  
25 licensed in the application process.

1           So I have to disagree with that  
2       statement. I guess I can do that in a brief.

3           HEARING OFFICER GEFTER: Okay.

4           Ms. Houck, Exhibit 120, does that  
5       address any of those questions that Mr. Sarvey  
6       raises?

7           STAFF COUNSEL HOUCK: I believe that  
8       Exhibit 120 will address the issues concerning  
9       efficiency related to this project, and I would  
10      enter an objection regarding relevance as to that  
11      general information as we are looking at a  
12      specific power plant license for the Tesla Power  
13      Project. I believe Exhibit 120 will answer  
14      questions related to the efficiency of this plant.

15          INTERVENOR SARVEY: And then the other  
16      question I have related to that exhibit is does  
17      Staff consider that the Applicant's ability to  
18      obtain financing more important than energy  
19      resources consumption of this project?

20          STAFF COUNSEL HOUCK: I am going to  
21      enter an objection that it appears to be  
22      argumentative.

23          HEARING OFFICER GEFTER: Okay.  
24      Ms. Houck's objection as to relevance to your  
25      first question is sustained.

1 INTERVENOR SARVEY: Okay.

2 HEARING OFFICER GEFTER: And also that  
3 information is probably available through Energy  
4 Commission documents anyway that you can access  
5 for your own information.

6 INTERVENOR SARVEY: All right.

7 HEARING OFFICER GEFTER: And with  
8 respect to the second question, Ms. Houck's  
9 objection is also sustained as argumentative and  
10 you might want to put that in a brief.

11 INTERVENOR SARVEY: Okay, thank you.

12 APPLICANT COUNSEL GALATI: Let me  
13 suggest that, with respect to your first question,  
14 you will find that information in our integrated  
15 energy policy report docket, and I think I would  
16 direct you to a report called the Electricity and  
17 Natural Gas Assessment report that Staff published  
18 I believe in July.

19 INTERVENOR SARVEY: Okay.

20 APPLICANT COUNSEL GALATI: And also the  
21 Commission's web site is regularly updated as to  
22 the numbers of both megawatts that have been  
23 brought on line in recent years, megawatts that  
24 have been permitted but have not yet come on line,  
25 and megawatts currently in the licensing process.

1 And that web site I think is updated monthly.

2 INTERVENOR SARVEY: Thank you.

3 HEARING OFFICER GEFTER: Okay. Pending  
4 copies of Exhibit 120 for us to look at, as the  
5 Applicant do you have any other questions on this  
6 topic for the Staff?

7 APPLICANT COUNSEL GALATI: No questions  
8 and no objections to the exhibits being moved into  
9 evidence pending 120.

10 HEARING OFFICER GEFTER: So we'll leave  
11 these topics, other than pending Exhibit 120, and  
12 we can move on to the next topic, which is  
13 Transmission System Engineering and I would ask  
14 Mr. Galati to start.

15 APPLICANT COUNSEL GALATI: Okay. At  
16 this time I'd like to call Mr. Dwight Mudry.

17 If Mr. Mudry could please be sworn.  
18 Whereupon,

19 DWIGHT MUDRY  
20 Was called as a witness herein and, after having  
21 been duly sworn, was examined and testified as  
22 follows:

23 THE REPORTER: The witness is sworn.

24 APPLICANT COUNSEL GALATI: Mr. Mudry  
25 will be sponsoring most if not all of the other

1 areas by declaration.

2 DIRECT EXAMINATION

3 BY APPLICANT COUNSEL GALATI:

4 Q Mr. Mudry, would you please state and  
5 spell your name for the record, tell us who you  
6 are employed by, and what your role was on the  
7 Tesla Power Project.

8 A My name is Dwight Mudry. That's spelled  
9 D-w-i-g-h-t, and the last name is M-u-d-r-y,  
10 pronounced Mudry. I am a consulting scientist  
11 with Tetra Tech FW, formerly known as Foster  
12 Wheeler Environmental. I have been with that  
13 company for 20 years.

14 My education includes a bachelor of  
15 science and a master of arts in biology, and I  
16 also have a Ph.D. in biology. I have about 30  
17 years of experience working on power plants and  
18 other large projects. Most of my work has been  
19 data collection, analysis of impacts, and  
20 development of mitigation measures. I worked for  
21 about six years on the contract with the Energy  
22 Commission for Staff, reviewing projects.

23 On this project I was responsible for  
24 the overall preparation of the AFC, and I did the  
25 final editing and directing of Staff's preparation

1 of all of the text.

2 Q Dr. Mudry, are you familiar with  
3 Exhibit 33, the testimony of Steve Mavis entitled  
4 Transmission System Engineering, and Mavis is  
5 spelled M-a-v-i-s?

6 A Yes, I am.

7 Q Okay. Do you have any changes to that  
8 testimony at this time?

9 A No changes.

10 APPLICANT COUNSEL GALATI: At this time  
11 I would like Exhibit 33 to be moved into evidence,  
12 along with a long list of exhibits that are being  
13 sponsored, if I could just run through them very  
14 quickly: a portion of Exhibit 1, a portion of  
15 Exhibit 2, a portion of Exhibit 3, Exhibit 7  
16 through 13. I would ask for those to be moved  
17 into evidence at this time.

18 HEARING OFFICER GEFTER: Okay. I have a  
19 question regarding Exhibit 33 that was the  
20 testimony of a Mr. Steve Mavis, about Mr. Mudry's  
21 testimony. What was Mr. Mudry's relationship with  
22 Steve Mavis?

23 APPLICANT COUNSEL GALATI: I am  
24 providing Mr. Mudry as the overall project manager  
25 for the AFC preparation and all of the AFC



1 proceeding as my sponsoring witness, since all of  
2 these areas are by declaration.

3 HEARING OFFICER GEFTER: Any objection  
4 by Staff?

5 STAFF COUNSEL HOUCK: No objection.

6 HEARING OFFICER GEFTER: Intervenors?

7 INTERVENOR SARVEY: No objection.

8 HEARING OFFICER GEFTER: All right.  
9 Exhibits 7 through 13, Exhibit 33, and the other  
10 portions of exhibits identified by Mr. Galati are  
11 now received into the record.

12 (Thereupon Exhibits 7-13, 33 and portions of  
13 Exhibits 1-3 were received into evidence.)

14 HEARING OFFICER GEFTER: Any cross-  
15 examination of the witnesses? There shouldn't be,  
16 because they're by declaration, but I'm giving  
17 people an opportunity for that.

18 All right, Staff, your testimony on  
19 Transmission System Engineering.

20 STAFF COUNSEL HOUCK: And as Mr. Galati  
21 said, this area is being submitted by declaration  
22 and would the Committee like our project manager  
23 sworn in to sponsor this? We do have an  
24 additional declaration that was docketed from the  
25 California Independent System Operator from Donna

1 Jordan. It was docketed September 8th, 2003,  
2 which would need an exhibit number and we do have  
3 copies.

4 HEARING OFFICER GEFTER: That's  
5 Exhibit 69, if you want to distribute that to the  
6 parties.

7 If Mr. Caswell could be sworn.  
8 Whereupon,

9 JACK CASWELL  
10 Was called as a witness herein and, after having  
11 been duly sworn, was examined and testified as  
12 follows:

13 THE REPORTER: The witness has been  
14 sworn.

15 DIRECT TESTIMONY

16 THE WITNESS: I'm Jack Caswell, project  
17 manager for the California Energy Commission. In  
18 response to questions raised at the prehearing  
19 conference, we spoke with Donna Jordan, the ISO,  
20 independent system operator, and she reviewed and  
21 is confirming that they have reassessed the queue  
22 that this project is in for the ISO and its  
23 ability to provide service to the transmission  
24 system and its reaction or its impact on that  
25 system.

1           If you'll notice, I believe it's on the  
2       fourth question here, number four in her  
3       declaration, she has reviewed subject testimony  
4       and evaluated the system changes related to the  
5       system reliability, and she believes that this  
6       project is going to be in compliance with the  
7       impacts of this system.

8           HEARING OFFICER GEFTER:   Okay.   Any  
9       objection to Exhibit 69?

10          APPLICANT COUNSEL GALATI:   No objection.

11          INTERVENOR SARVEY:   No objection.

12          INTERVENOR BOYD:   No objection.

13          HEARING OFFICER GEFTER:   And the other  
14       exhibits that you want to submit with respect to  
15       Transmission System Engineering?

16          STAFF COUNSEL HOUCK:   There is a portion  
17       of Exhibit 51, pages 5.5-1 through 25, and the  
18       preparers of that testimony have submitted their  
19       qualifications and signed declarations in the  
20       final staff assessment and we would ask that that  
21       be moved into evidence.

22          HEARING OFFICER GEFTER:   Any objection?

23          APPLICANT COUNSEL GALATI:   No objection.

24          HEARING OFFICER GEFTER:   The exhibits  
25       identified by Ms. Houck on Transmission System

1 Engineering are now received into the record.

2 (Thereupon Exhibit 69 and a portion of  
3 Exhibit 51 was received into evidence.)

4 HEARING OFFICER GEFTER: I also want to  
5 identify for the record Exhibit 13, which  
6 Applicant has submitted, is the Cal ISO's final  
7 in-connection approval letter. And I am assuming  
8 that Exhibit 69 that we just received is referring  
9 to that in-connection approval letter in terms of  
10 the declarant's indication that she reviewed the  
11 Cal ISO's recommendations and mitigation measures.

12 STAFF COUNSEL HOUCK: That is my  
13 understanding. I will contact Staff and if that  
14 is not correct, I will inform the Committee prior  
15 to the end of the hearing.

16 HEARING OFFICER GEFTER: All right,  
17 Transmission System Engineering is closed. We are  
18 moving on to Transmission Line Safety and  
19 Nuisance.

20 Mr. Galati?  
21 Whereupon,

22 DWIGHT MUDRY  
23 Was recalled as a witness herein and, having been  
24 previously sworn, was examined and testified  
25 further as follows:

1           APPLICANT COUNSEL GALATI: Again, our  
2           sponsoring witness is Dr. Mudry. He has  
3           previously been sworn and has given his  
4           qualifications.

5                       DIRECT EXAMINATION

6           BY APPLICANT COUNSEL GALATI:

7           Q     Dr. Mudry, I would just like you to  
8           identify for us whether you are familiar with  
9           Exhibit 34, your testimony on Transmission Line  
10          Safety and Nuisance.

11          A     Yes, I am.

12          Q     Do you have any changes or modifications  
13          to that testimony?

14          A     No changes.

15          APPLICANT COUNSEL GALATI: Ms. Gefter, I  
16          would like to identify that that testimony, in  
17          addition to -- and, by the way, that's  
18          Exhibit 34 -- also sponsors section 4.2 of the  
19          AFC, which is that portion of Exhibit 1. And at  
20          this time I'd like Exhibit 34 and that portion of  
21          Exhibit 1 moved into evidence.

22                HEARING OFFICER GEFTER: Any objection?

23                STAFF COUNSEL HOUCK: No objection.

24                HEARING OFFICER GEFTER: And no  
25          objection from Intervenors then.

1           Okay. Exhibit 34 is received into the  
2           record as well as the exhibits identified  
3           Mr. Galati related to Transmission Line Safety and  
4           Nuisance.

5           (Thereupon Exhibit 34 and portions of  
6           Exhibit 1 were received into evidence.)

7           HEARING OFFICER GEFTER: Staff, do you  
8           want to move your exhibits?

9           STAFF COUNSEL HOUCK: Yes, we would like  
10          to move a portion of Exhibit 51, the Transmission  
11          Line Safety and Nuisance pages 4.10-1 through  
12          4.10-15 and Mr. Caswell is the sponsoring witness,  
13          and I do not believe we have any changes.  
14          Whereupon,

15                       JACK CASWELL

16          Was recalled as a witness herein and, having been  
17          previously sworn, was examined and testified  
18          further as follows:

19                       DIRECT TESTIMONY

20          WITNESS CASWELL: No.

21          HEARING OFFICER GEFTER: Any objection?

22          APPLICANT COUNSEL GALATI: No objection.

23          INTERVENOR SARVEY: No objection.

24          HEARING OFFICER GEFTER: Okay. The  
25          exhibits identified by Ms. Houck related to TLSN

1 are now received into the record.

2 (Thereupon a portion of Exhibit 51 was  
3 received into evidence.)

4 HEARING OFFICER GEFTER: The topic of  
5 Transmission Line Safety and Nuisance is now  
6 closed.

7 The next topic is Geological and  
8 Paleontological Resources. Mr. Galati?

9 APPLICANT COUNSEL GALATI: Again, we  
10 have Dr. Mudry as our sponsoring witness.

11 DIRECT EXAMINATION

12 BY APPLICANT COUNSEL GALATI:

13 Q Dr. Mudry, are you familiar with  
14 Exhibit 35, which is the testimony of Tom Stewart  
15 and David Dirkin on Geological and Paleontological  
16 Resources?

17 A Yes, I am.

18 Q Do you have any changes or modifications  
19 to that testimony?

20 A We have no changes.

21 APPLICANT COUNSEL GALATI: Ms. Hearing  
22 Officer, that testimony also sponsors a portion of  
23 Exhibit 1, specifically sections 5.5-5.17,  
24 Appendices G and O, a portion of Exhibit 2,  
25 specifically response Paleo 1, and a portion of

1 Exhibit 3, specifically responses 86 through 92.

2 I would ask that those exhibits as well as  
3 Exhibit 35 be admitted into evidence, please.

4 HEARING OFFICER GEFTER: Okay. Any  
5 objection?

6 STAFF COUNSEL HOUCK: No objection.

7 HEARING OFFICER GEFTER: No objection  
8 from Intervenors either.

9 Okay, Exhibit 35 and the other portions  
10 of the exhibits identified by Mr. Galati related  
11 to Geological and Paleontological Resources are  
12 now received into the record.

13 (Thereupon Exhibit 35 and portions of  
14 Exhibits 1-3 were received into evidence.)

15 HEARING OFFICER GEFTER: And I must  
16 congratulate Mr. Galati on being able to pronounce  
17 that word so well. You must have practiced.

18 APPLICANT COUNSEL GALATI: Well, what  
19 would be hard is if my sponsoring witness were  
20 Zoran Rausavljevich.

21 (Laughter.)

22 HEARING OFFICER GEFTER: So that topic  
23 is now closed and we are moving on to the next  
24 topic, which is Cultural -- Oh, I'm sorry, I  
25 forgot to ask Staff.



1           Staff, did you move your exhibits on  
2 this topic?

3           STAFF COUNSEL HOUCK: Yes, we would like  
4 to move a portion of Exhibit 51, pages 5.21-16 and  
5 also Exhibit 53, the Staff's first addendum,  
6 section 3.2 into evidence.

7           Mr. Caswell is our sponsoring witness.  
8 Whereupon,

9                       JACK CASWELL  
10 Was recalled as a witness herein and, having been  
11 previously sworn, was examined and testified  
12 further as follows:

13                       DIRECT EXAMINATION  
14 BY STAFF COUNSEL HOUCK:

15           Q     Do we have any changes?

16           A     There are no changes.

17           HEARING OFFICER GEFTER: Any objection?

18           APPLICANT COUNSEL GALATI: No objection.

19           HEARING OFFICER GEFTER: No objection  
20 from Intervenors, okay. Staff's exhibits as  
21 identified by Ms. Houck as related to Geological  
22 and Paleontological Resources are now received  
23 into the record.

24                       (Thereupon portions of Exhibits 51 and  
25 53 were received into evidence.)

1 HEARING OFFICER GEFTER: And now that  
2 topic is closed.

3 The next topic is Cultural Resources.

4 Mr. Galati?

5 APPLICANT COUNSEL GALATI: Dr. Mudry has  
6 previously been sworn.

7 Whereupon,

8 DWIGHT MUDRY

9 Was recalled as a witness herein and, having been  
10 previously sworn, was examined and testified  
11 further as follows:

12 DIRECT EXAMINATION

13 BY APPLICANT COUNSEL GALATI:

14 Q Dr. Mudry, are you familiar with  
15 Exhibit 36, which is the testimony of Andrew  
16 Gorman and Stuart Reeve?

17 A Yes, I am.

18 Q Do you have any changes or modifications  
19 to that testimony?

20 A We have no changes.

21 APPLICANT COUNSEL GALATI: Ms. Gefter,  
22 Exhibit 36 also sponsors a portion of Exhibit 1,  
23 specifically sections 5.16 and Appendix L; a  
24 portion of Exhibit 2, specifically response to  
25 Cultural 1 through Cultural 12; a portion of

1 Exhibit 3, specifically responses to numbers 48  
2 through 85; and Exhibit 4, portions responding to  
3 responses 226 through 238.

4 And, for the court reporter, I apologize  
5 I have not been spelling names. It's Andrew  
6 Gorman, G-o-r-m-a-n, and Stuart Reeve, R-e-e-v-e.  
7 That is Exhibit 36. I can go back and spell the  
8 other names of the last three or four, if you'd  
9 like.

10 THE REPORTER: Okay.

11 APPLICANT COUNSEL GALATI: I would ask  
12 for Exhibit 36 along with those previously  
13 mentioned exhibits moved in evidence at this time.

14 HEARING OFFICER GEFTER: Okay. Any  
15 objection?

16 STAFF COUNSEL HOUCK: No objection.

17 INTERVENOR SARVEY: No objection.

18 HEARING OFFICER GEFTER: Let me just  
19 ask, when I ask the Intervenors, if you would both  
20 indicate individually whether you object or not,  
21 instead of just shaking your head, because the  
22 reporter can't --

23 INTERVENOR BOYD: Sorry, that's not  
24 reportable, I understand.

25 HEARING OFFICER GEFTER: So no objection

1 from the Intervenor's to the Applicant's exhibits.

2 Exhibit 36 and the other exhibits  
3 identified by Mr. Galati related to Cultural  
4 Resources are now received into the record.

5 (Thereupon Exhibit 36 and portions of  
6 Exhibits 1-4 were received into evidence.)

7 HEARING OFFICER GEFTER: Staff, do you  
8 want to move your exhibits?

9 STAFF COUNSEL HOUCK: Yes, Staff would  
10 like to move a portion of Exhibit 51, section 4.3,  
11 pages 1-31, and Exhibit 52, section 2.3 as to  
12 Cultural Resources into evidence.

13 HEARING OFFICER GEFTER: Thank you. Any  
14 objection?

15 APPLICANT COUNSEL GALATI: No objection.

16 INTERVENOR SARVEY: No objection.

17 INTERVENOR BOYD: No objection.

18 HEARING OFFICER GEFTER: The exhibits  
19 identified by Ms. Houck related to Cultural  
20 Resources are now received into the record.

21 (Thereupon portions of Exhibits 51 & 52  
22 were received into evidence.)

23 HEARING OFFICER GEFTER: The topic of  
24 Cultural Resources is closed.

25 We're moving on to Hazardous Materials.

1 Mr. Galati?

2 APPLICANT COUNSEL GALATI: At this time  
3 I'd like Lida Moussavian and Duane McCloud to join  
4 me here. Duane McCloud has previously been sworn  
5 and described his qualifications.

6 Whereupon,

7 DUANE MCCLOUD

8 Was recalled as a witness herein and, having been  
9 previously sworn, was examined and testified  
10 further as follows:

11 THE REPORTER: I'll swear the witness.

12 Whereupon,

13 LIDA MOUSSAVIAN

14 Was called as a witness herein and, after having  
15 been duly sworn, was examined and testified as  
16 follows:

17 DIRECT EXAMINATION

18 BY APPLICANT COUNSEL GALATI:

19 Q Good afternoon, Ms. Moussavian. Could  
20 you please state your name, spell it for the  
21 record, tell us where you are employed and what  
22 your role was or is on the Tesla Power Project.

23 A My name is Lida Moussavian, L-i-d-a  
24 M-o-u-s-s-a-v-i-a-n, and I work for Tetra Tech FW,  
25 which is formerly Foster Wheeler Environmental

1 Corporation, as a principal engineering project  
2 manager.

3 I was the project coordinator and  
4 project manager for the preparation of the AFC  
5 document and the subsequent documents. My  
6 educational background is in chemical engineering.  
7 I have a bachelor's degree from UC Berkeley, and I  
8 have had 19 years of experience working as a  
9 consulting engineer for various power plants.

10 Q Thank you.

11 Mr. McCloud, are you familiar with  
12 Exhibit 37, which is your previously filed  
13 testimony of Lida Moussavian and Duane McCloud,  
14 previously docketed on August 29th, 2003?

15 A Yes, I am.

16 Q And do you have any changes or  
17 corrections to that testimony?

18 A No, I do not.

19 APPLICANT COUNSEL GALATI: Ms. Gefter,  
20 that testimony also sponsors a portion of  
21 Exhibit 1, specifically section 5.12, table 6.1-1,  
22 and section 6.5.12; also, a portion of Exhibit 3,  
23 which is response number 93. At this time I would  
24 ask that those two exhibits and Exhibit 37 be  
25 moved into the record.

1 HEARING OFFICER GEFTER: Any objection?

2 STAFF COUNSEL HOUCK: No objection.

3 INTERVENOR SARVEY: No objection.

4 INTERVENOR BOYD: No.

5 HEARING OFFICER GEFTER: All right.

6 Applicant's Exhibit 37 and the other exhibits

7 identified by Mr. Galati related to Hazardous

8 Materials are now received into the record.

9 (Thereupon Exhibit 37 and portions of  
10 Exhibits 1 & 3 were received into evidence.)

11 HEARING OFFICER GEFTER: Staff?

12 STAFF COUNSEL HOUCK: Yes, and we do  
13 have Dr. Alvin Greenberg here today, who is the  
14 sponsor and witness.

15 HEARING OFFICER GEFTER: All right.

16 STAFF COUNSEL HOUCK: Would the  
17 Committee like to have him sworn in at this time?

18 HEARING OFFICER GEFTER: Yes.

19 Whereupon,

20 ALVIN GREENBERG

21 Was called as a witness herein and, after having  
22 been duly sworn, was examined and testified as  
23 follows:

24 THE REPORTER: The witness is sworn.

25 STAFF COUNSEL HOUCK: Thank you.

1 DIRECT EXAMINATION

2 BY STAFF COUNSEL HOUCK:

3 Q Dr. Greenberg, can you please relate  
4 your work on this project as it relates to  
5 Hazardous Materials? Did you prepare this  
6 section?

7 A Yes, I did.

8 Q And did you prepare the section for  
9 Hazardous Materials in Staff's first addendum,  
10 which is Exhibit 22?

11 A Yes, I did.

12 Q And did you prepare the Hazardous  
13 Materials portion of Staff's Exhibit 53, which is  
14 Staff's second addendum?

15 A Yes.

16 Q And do you have any changes to your  
17 testimony?

18 A No.

19 STAFF COUNSEL HOUCK: Staff would  
20 request that Exhibit 51, section 4.4, pages 1  
21 through 28; Exhibit 52, section 2.4; and  
22 Exhibit 53, the Hazardous Materials portion  
23 starting at page 4 through page 8, be entered into  
24 evidence.

25 HEARING OFFICER GEFTER: Any objection?



1 APPLICANT COUNSEL GALATI: No objection.

2 INTERVENOR SARVEY: No objection.

3 INTERVENOR BOYD: No objection.

4 HEARING OFFICER GEFTER: Okay.

5 (Thereupon portions of Exhibits 51-53  
6 were received into evidence.)

7 HEARING OFFICER GEFTER: Is  
8 Mr. Greenberg available for cross-examination?

9 STAFF COUNSEL HOUCK: It was our  
10 understanding that this was an uncontested topic.  
11 If there are questions regarding  
12 clarification, Mr. Greenberg is here today.

13 HEARING OFFICER GEFTER: Mr. Boyd  
14 apparently had some questions as to that at the  
15 prehearing conference.

16 INTERVENOR BOYD: Yeah, I just had a  
17 couple of questions about the specific hazardous  
18 material.

19 CROSS-EXAMINATION

20 BY INTERVENOR BOYD:

21 Q What I'm interested in is the aqueous  
22 ammonia that is going to be supplying the SER  
23 system for the plant. My question is has the haz  
24 mat, who will provide the haz mat service, let us  
25 say, in the case of a transportation accident with

1 the transport of this ammonia? Would it be from  
2 Alameda County or would it be from Tracy or San  
3 Joaquin County?

4 A Mr. Boyd, a transportation accident  
5 involving the transport of aqueous ammonia or, for  
6 that matter, any hazardous material in the State  
7 of California, whether it's going to a CEC-  
8 certified power plant or any other facility in the  
9 entire state, would involve local jurisdiction,  
10 depending on the location of the spill.

11 If the spill, for example, occurred just  
12 on the side of Stockton, which would be the source  
13 of the aqueous ammonia, it would be the Stockton  
14 Fire Department and the CHP and Cal Trans if it  
15 were on an interstate highway who would be  
16 responding. If it was just outside the doorstep  
17 or the entrance to the Tesla Power Plant, in that  
18 case the jurisdiction would be the Alameda County  
19 Fire Department and their haz mat teams.

20 And so the responsibility for first  
21 response -- I'm not talking about secondary  
22 response, but first response is the local  
23 jurisdiction. And I think you're aware of what  
24 that entails and that actual cleanup is done or is  
25 accomplished later by secondary responders. The

1 actual cleanup is accomplished by contractors to  
2 the vendor, who is the owner of the hazardous  
3 materials until such time as it is delivered.

4 Q And my second question is, let's assume  
5 that since it's coming from Stockton that the  
6 highest probability would be that the accident  
7 would occur within, say, San Joaquin County. Is  
8 the Staff offering up any funding for emergency  
9 response in the case of a spill, or depending, as,  
10 for example, in the Altamonte case, depending on  
11 Alameda County to do it, to provide that service,  
12 and the funding was going to Alameda County?

13 So my question is are you guys offering  
14 up -- in Altamonte Staff offered up some funding  
15 to fund emergency response services. I'm just  
16 curious to know if that's going to be offered up  
17 in this case.

18 HEARING OFFICER GEFTER: Mr. Boyd, are  
19 you asking whether the Staff is funding it or  
20 whether the Applicant is.

21 INTERVENOR BOYD: Yeah, whether they're  
22 offering up mitigation funding for the cost of  
23 emergency response in case of a spill of this  
24 material in San Joaquin County.

25 STAFF COUNSEL HOUCK: Just to clarify,

1 are you asking if Staff has found that there would  
2 be an unmitigated impact or an impact that would  
3 require mitigation in this regard?

4 INTERVENOR BOYD: Well, I assume you  
5 would have to do that first before you could offer  
6 up any mitigation, yes.

7 STAFF COUNSEL HOUCK: Okay. So you're  
8 asking if we're requiring the Applicant to provide  
9 mitigation in dollars; is that the question?

10 INTERVENOR BOYD: Well, at this point  
11 I'm not asking if it's a condition of approval,  
12 I'm asking if Staff is recommending it, basically.  
13 I'm not asking if it's a condition at this point,  
14 I'm just asking whether you're recommending that  
15 we bring additional, for San Joaquin County as a  
16 form of emergency response for matters like this.

17 WITNESS GREENBERG: Well, first of all,  
18 Mr. Boyd, I do disagree with your conclusion that  
19 the most likely location of a transportation  
20 accident would occur in San Joaquin County;  
21 nevertheless, the direct answer to your question  
22 is no. Staff has found that there are no impacts  
23 that would be significant, and therefore, there  
24 would be no need for mitigation.

25 INTERVENOR BOYD: Okay, thank you. That

1       answers my question.

2               (Thereupon, the tapes were changed with  
3       no interruption in the proceeding.)

4               HEARING OFFICER GEFTER:  Anything else?

5               INTERVENOR SARVEY:  I'd like to ask a  
6       couple of quick questions if I could, please.

7               CROSS-EXAMINATION

8       BY INTERVENOR SARVEY:

9               Q     Mr. Greenberg, have you put any special  
10       conditions in the project to deal with the intense  
11       fog that is experienced at the project site in  
12       terms of transportation of hazardous materials?

13              A     No, I have not.

14              Q     In the East Altamonte case, the exact  
15       same conditions existed with fog and you did.  Can  
16       you explain in this instance why you didn't?

17              A     Yes, I'll be happy to, Mr. Sarvey.  In  
18       East Altamonte case, the East Altamonte Energy  
19       Center, I was proposing to use anhydrous ammonia,  
20       not aqueous ammonia.  In that case, should there  
21       be a transportation accident involving anhydrous  
22       ammonia, the consequences, in other words, the  
23       spread of the anhydrous ammonia under fog  
24       conditions would be much greater, it would present  
25       a much greater hazard than aqueous ammonia.  The

1 aqueous ammonia is a much safer alternative to  
2 use, so special precautions were needed at that  
3 facility because of the use of anhydrous.

4 This is aqueous, and I don't feel that  
5 it was necessary.

6 Q Okay. In the SMUD Cosumnes project,  
7 they used aqueous ammonia and you required a  
8 condition in terms of transporting hazardous  
9 materials in the fog and pretty much the same  
10 traffic conditions that we have here, a winding  
11 country road. Can you explain why that is?

12 A You're correct, Mr. Sarvey. But again,  
13 it is the site-specific conditions that dictate  
14 whether or not we make that recommendation. In  
15 this case, the only viable route to the SMUD  
16 Cosumnes project went right by the school. We  
17 don't like transportation routes that go by  
18 sensitive receptors such as schools or hospitals,  
19 but there was no viable alternative route. And,  
20 therefore, we added that specific condition of  
21 certification.

22 We did so at another facility in  
23 Southern California. It didn't address fog  
24 issues, but there were some other special  
25 conditions and they were proposing to use aqueous

1 ammonia. And they were within a thousand feet of  
2 a school, and it was a route which was heavily  
3 used by school buses and parents and children  
4 walking to school. So we had some special  
5 conditions in that case.

6 Q And have you identified the route for  
7 the hazardous materials as of yet?

8 A We have identified two routes. We have  
9 not specified a particular route, because both of  
10 those routes are more or less equal as far as  
11 distance and ease of access to the facility. We  
12 only specify a route if we think that there are  
13 multiple routes and if one is clearly superior to  
14 another or there is a route that goes by a  
15 sensitive receptor such as a school, hospital,  
16 daycare, etc.

17 HEARING OFFICER GEFTER: And  
18 Mr. Greenberg --

19 BY INTERVENOR SARVEY:

20 Q And one last question --

21 INTERVENOR SARVEY: Oh, go ahead, I'm  
22 sorry.

23 HEARING OFFICER GEFTER: Let me  
24 interject here -- when you indicated that there  
25 are two alternative routes that you've discussed

1 with the Applicant, in a recent filing by staff,  
2 in the Traffic and Transportation conditions, they  
3 added a route for hazardous materials, which  
4 apparently I believe Applicant or one of the  
5 parties has actually contested that route, or  
6 wants to modify the language of that route.

7 And so why don't we talk specifically  
8 about that particular route for hazardous  
9 materials. Although it is one of the conditions  
10 in Transportation, it is relevant to this topic.

11 We'll go off the record.

12 (Thereupon a recess was taken.)

13 HEARING OFFICER GEFTER: Dr. Greenberg?

14 WITNESS GREENBERG: You asked about a  
15 specific transportation route, and I was  
16 explaining that I did not feel that there was any  
17 significant impact from using one of two routes  
18 into the facility, as far as delivery of hazardous  
19 materials. And you have correctly pointed out  
20 that the Traffic and Transportation section did  
21 indeed include a specific hazardous materials  
22 delivery route, which goes to show you that the  
23 left hand truly does not know what the right hand  
24 is doing.

25 Nevertheless, that route, as described



1 in Traffic and Transportation, quite frankly  
2 doesn't exist. It names an off-ramp that doesn't  
3 exist. And so the appropriate route would be, and  
4 I would suggest this, then, is condition of  
5 certification Haz 12, and I don't have the exact  
6 wording just yet, but the route would be  
7 Interstate 580 exiting at Mountainhouse Parkway,  
8 taking that south until it turns into Addison Pass  
9 Road, and then making a right-hand turn on Midway,  
10 heading north on Midway and then the left-hand  
11 turn into the facility.

12 HEARING OFFICER GEFTER: And how many  
13 miles is that off the freeway?

14 WITNESS GREENBERG: That is  
15 approximately four miles, give or take a few feet,  
16 off the freeway.

17 HEARING OFFICER GEFTER: All right. And  
18 you're proposing a new condition, Haz 12, and that  
19 would be to remove the route that's described in  
20 the new Trans condition, I forgot what number it  
21 is, in Transportation?

22 WITNESS GREENBERG: With Counsel's  
23 approval, yes.

24 HEARING OFFICER GEFTER: And,  
25 Mr. Galati, does Applicant have any objection to

1       that?

2               APPLICANT COUNSEL GALATI:  We have no  
3       objection.  Just to clarify the record, the  
4       Applicant filed supplemental testimony on Traffic  
5       and Transportation when that route came out, and  
6       we basically identified the same route, although  
7       we thought that it was Patterson Pass Road as the  
8       exit, but clarify that it is Mountainhouse Parkway  
9       that turns into Patterson Pass Road.

10              So we have modified the condition,  
11       Trans 4, to identify that route and with the  
12       modifications that Dr. Greenberg has described, we  
13       believe that that would be acceptable to us and we  
14       could move that to Hazardous Materials.

15              HEARING OFFICER GEFTER:  All right, and  
16       before we begin the evidentiary hearings, we need  
17       to see the proposed language for condition Haz 12,  
18       and also the modification to condition Trans 4.

19              WITNESS GREENBERG:  First thing  
20       tomorrow.

21              HEARING OFFICER GEFTER:  That would be  
22       very helpful.

23              All right, is there anything else --

24              INTERVENOR SARVEY:  Are we leaving  
25       Hazardous Materials open, then, for later

1 discussion?

2 HEARING OFFICER GEFTER: For the limited  
3 purpose of receiving the language for condition  
4 Haz 12. Do you have any other questions on that  
5 topic?

6 INTERVENOR SARVEY: Well, we were still  
7 dealing with the fog issue, and I have some  
8 questions on that.

9 HEARING OFFICER GEFTER: All right.

10 BY INTERVENOR SARVEY:

11 Q Dr. Greenberg, you were in the Tracy  
12 Peaker Plant siting case; is that correct?

13 A That's correct.

14 Q Do you remember the development called  
15 the South Schulte project?

16 A Yes, I do.

17 Q And were you aware that that project  
18 will run within a thousand feet of that corridor?

19 A Not the exact number of feet, but  
20 somewhere near there, yes.

21 Q And were you aware that they just  
22 recently filed a supplemental EIR and they intend  
23 to build soon?

24 A No.

25 Q Okay. I just would like to see that

1       that fog condition is put in, because we will be  
2       going by schools and residences, and it's  
3       appropriate as has been done in other siting  
4       cases.

5               INTERVENOR SARVEY:  That's all I have to  
6       say.

7               HEARING OFFICER GEFTER:  Mr. Sarvey,  
8       could you tell us the language that you would like  
9       to see in a condition that deals with fog?

10              INTERVENOR SARVEY:  Basically, I would  
11       use Mr. Greenberg's language in the East Altamonte  
12       Energy Center, which I don't -- I probably could  
13       come up with it right now, if we had time.

14              WITNESS GREENBERG:  I do wish to  
15       clarify, for Intervenor Sarvey's benefit, that  
16       when I talk about a hazardous materials delivery  
17       route going by a school, I mean directly on the  
18       route, not a block or two blocks or a thousand  
19       feet away.  And so if it turns out that he  
20       provides additional information that I am not  
21       aware of that shows that directly on this route  
22       there would be a school, a hospital or a daycare,  
23       then I would certainly revise my opinion.

24       BY INTERVENOR SARVEY:

25              Q       So within a thousand feet, if I can

1 provide you that information?

2 A No, not within a thousand feet. I mean,  
3 directly on the route.

4 Q Adjacent to the route.

5 A On the street. If it's a block away,  
6 that's a different story. We need to know how big  
7 the block is.

8 HEARING OFFICER GEFTER: Okay.

9 INTERVENOR SARVEY: Okay, well, I'll  
10 provide that information for you later.

11 HEARING OFFICER GEFTER: All right.  
12 Anything else in Hazardous Materials, Mr. Galati?

13 APPLICANT COUNSEL GALATI: I just have  
14 to have a followup question based on the cross-  
15 examination from Intervenor Sarvey.

16 CROSS-EXAMINATION

17 BY APPLICANT COUNSEL GALATI:

18 Q And that is, Dr. Greenberg, do you  
19 believe that there is an impact that needs to be  
20 mitigated with this fog condition on the Tesla  
21 Power Project?

22 A No, I do not. I believe I did state  
23 that earlier.

24 APPLICANT COUNSEL GALATI: Thank you.

25 HEARING OFFICER GEFTER: All right. I

1 have a question on hazardous materials for you  
2 also. Regarding the condition Haz 1, which refers  
3 to a table listed in Appendix B, and it's AFC  
4 Table 3.4-17, which I believe is taken from  
5 Exhibit 1 in the AFC, and then I had requested at  
6 the prehearing conference that that table be  
7 revised so that it be legible.

8 APPLICANT COUNSEL GALATI: Yes.

9 HEARING OFFICER GEFTER: All right, and  
10 so I received in I believe it's Exhibit 53, there  
11 is a table called Hazardous Materials Figure 1,  
12 and it says that it is, the records go back to  
13 that original table, 3.4-17, but the table looks a  
14 bit different. I don't know whether the text is  
15 different, but it's revised to some extent.

16 WITNESS GREENBERG: Yes, it is revised  
17 and I hoped that it was consistent with the tables  
18 that we had previously provided to you in other  
19 siting cases that clarified the issues and put  
20 them in the format that made it more easily  
21 readable and understandable.

22 HEARING OFFICER GEFTER: Okay.

23 WITNESS GREENBERG: But the same exact  
24 information should be on the AFC table as on this  
25 table. This table is meant to supplant the table

1 referenced in Haz 1.

2 HEARING OFFICER GEFTER: Okay, and is  
3 Applicant in agreement with that table, the table  
4 that was submitted by Staff in Exhibit 53 called  
5 Hazardous Materials Figure 1?

6 APPLICANT COUNSEL GALATI: Yes, we are.

7 HEARING OFFICER GEFTER: All right,  
8 thank you.

9 Anything else on Hazardous Materials at  
10 this point?

11 Okay, the topic will be closed except  
12 for receipt of the language for the proposed new  
13 condition Haz 12, and also information from  
14 Mr. Sarvey regarding the route for the hazardous  
15 materials delivery.

16 And before we move on beyond Hazardous  
17 Materials, we have a comment from Mrs. Sarvey. If  
18 you'd like to come forward now, this would be  
19 Public Comment.

20 If someone could help her find a  
21 microphone, I would appreciate that.

22 MRS. SARVEY: Hi. I'm Susan Sarvey,  
23 Clean Air for Citizens and Legal Equality.

24 I'm deeply concerned that Mr. Greenberg  
25 is allowing a third shipment of ammonia to come

1       into the Tracy area from Stockton. I live in a  
2       highly fogged area, and you have to live here to  
3       understand how serious the fog is. You cannot see  
4       when we're having fog and I was shocked when he  
5       said he didn't think that if we had an incident  
6       that it would be in San Joaquin County. If it's  
7       coming from Stockton and it's going through Tracy  
8       to this plant that's on our border, where the heck  
9       would it happen at?

10               I would really strongly hope that at  
11       some point, someone would provide the mitigation  
12       for the hazardous materials vehicle and confined  
13       space rescue vehicle that the City of Tracy is  
14       trying to put in so that they can protect our  
15       community.

16               And in response to him being concerned  
17       about things being directly adjacent, I think you  
18       need to understand Tracy is in the process of  
19       building all of their softball, soccer and  
20       football fields adjacent to 580 for children ages  
21       five and up, and they are the most vulnerable to  
22       some kind of spill like this.

23               And I would be deeply concerned if my  
24       child was within 2500 feet of the spill. A five-  
25       year-old child breathing just a small amount of



1 aqueous ammonia could be very difficult. I had  
2 mine fall just having an asthma attack and not  
3 having enough oxygen for a split second and fell  
4 down a flight of stairs. Can you imagine being a  
5 child with asthma on a soccer field running and  
6 then there's a little bit of ammonia in the air?

7 I don't think it's appropriate to be  
8 expecting us to wait a half an hour for haz mat  
9 response from Castro Valley. I don't think it's  
10 appropriate to expect us to get haz mat response  
11 from Lawrence Livermore Lab, when they're getting  
12 ready to go into biowarfare stuff and the only  
13 incident that they've ever had is with their own  
14 scientists committing terrorism. You need to keep  
15 those people over there in their own ground taking  
16 care of us.

17 So I firmly and strongly object to his  
18 characterization. We have very serious fog here.  
19 This ammonia is coming from Stockton, through  
20 Stockton, through Tracy, all of which is San  
21 Joaquin County, and we are entitled to have a  
22 five-minute haz mat response, and we could have  
23 that if we just had our vehicle.

24 And it's not that much money. And if he  
25 had spread it out over the three plants, between

1 150, 175,000 a pop, we would have had our  
2 protection and everybody would have been happy.  
3 But he just keeps saying no, you people don't  
4 matter, you can wait, it's not any big deal.  
5 Well, you know, let his kids sit on that field and  
6 suck those fumes.

7 Thank you.

8 HEARING OFFICER GEFTER: Thank you,  
9 Mrs. Sarvey.

10 Is there anyone else who has a public  
11 comment on Hazardous Materials at this point?

12 Okay. We're going to move on to the  
13 next topic, and the next topic is Waste  
14 Management.

15 APPLICANT COUNSEL GALATI: We have the  
16 testimony of Lida Moussavian and Lida has  
17 previously been sworn.  
18 Whereupon,

19 LIDA MOUSSAVIAN  
20 Was recalled as a witness herein and, having been  
21 previously sworn, was examined and testified  
22 further as follows:

23 DIRECT EXAMINATION

24 BY APPLICANT COUNSEL GALATI:

25 Q And Ms. Moussavian, are you familiar

1 with Exhibit 38, which is your previously filed  
2 testimony entitled Waste Management?

3 A Yes, I am.

4 Q And do you have any changes or  
5 modifications to that testimony at this time?

6 A No, I don't.

7 APPLICANT COUNSEL GALATI: Okay.

8 Ms. Gefter, in addition to Exhibit 38,  
9 Ms. Moussavian is sponsoring a portion of  
10 Exhibit 1, specifically sections 5.13 and 6.5.12,  
11 table 6.1-1. In addition, response number 138 to  
12 data responses, which is a portion of Exhibit 3.

13 I would ask for those exhibits and  
14 Exhibit 38 to be moved into evidence at this time.

15 HEARING OFFICER GEFTER: Any objections  
16 to that?

17 INTERVENOR SARVEY: No objection.

18 STAFF COUNSEL HOUCK: No objection.

19 INTERVENOR BOYD: No objection.

20 HEARING OFFICER GEFTER: Thank you.  
21 Exhibit 38 and the other exhibits identified by  
22 Mr. Galati related to Waste Management are now  
23 received into the record.

24 (Thereupon Exhibit 38 and portions of  
25 Exhibits 1 & 3 were received into evidence.)

1 HEARING OFFICER GEFTER: Staff, do you  
2 have anything?

3 STAFF COUNSEL HOUCK: Yes, we do have  
4 Dr. Alvin Greenberg here who prepared the  
5 testimony in Waste Management.

6 HEARING OFFICER GEFTER: All right.  
7 Whereupon,

8 ALVIN GREENBERG  
9 Was recalled as a witness herein and, having been  
10 previously sworn, was examined and testified  
11 further as follows:

12 DIRECT EXAMINATION  
13 BY STAFF COUNSEL HOUCK:

14 Q Are you familiar with that testimony?

15 A Yes, I am.

16 Q Do you have any changes?

17 A No.

18 STAFF COUNSEL HOUCK: We would like to  
19 move Exhibit 51, section 4.12, and Exhibit 52,  
20 section 2.12, into evidence.

21 HEARING OFFICER GEFTER: Any objection?

22 APPLICANT COUNSEL GALATI: No objection.

23 INTERVENOR SARVEY: No objection.

24 INTERVENOR BOYD: No objection.

25 HEARING OFFICER GEFTER: Okay. The

1 exhibits identified by Ms. Houck related to Waste  
2 Management are now received into the record.

3 (Thereupon portions of Exhibits 51 & 52  
4 were received into evidence.)

5 HEARING OFFICER GEFTER: I have a  
6 question and I don't know if Dr. Greenberg can  
7 answer this or whether it's the Applicant.

8 During the testimony on Project  
9 Description, Applicant indicated that stormwater  
10 would also be retained on the site and not  
11 drained, and I don't know whether that's going to  
12 be part of the ZLD system or not.

13 Dr. Greenberg, can you answer that, or  
14 maybe the Applicant can --

15 APPLICANT COUNSEL GALATI: Ms. Gefter,  
16 if I could just identify that the person to answer  
17 that question would be Duane McCloud.

18 HEARING OFFICER GEFTER: Mr. McCloud.

19 APPLICANT COUNSEL GALATI: He has  
20 previously been sworn. He's a project engineer.  
21 Whereupon,

22 DUANE MCCLOUD  
23 Was recalled as a witness herein and, having been  
24 previously sworn, was examined and testified  
25 further as follows:

1           APPLICANT COUNSEL GALATI: Mr. McCloud,  
2           do you understand the question?

3           WITNESS MCCLOUD: Yes, I do. The  
4           stormwater retention system is not part of the ZLD  
5           system, per se. Stormwater would be retained in a  
6           separate retention basin and percolated into the  
7           soil. It wouldn't go to the process.

8           HEARING OFFICER GEFTER: Okay. Hearing  
9           no other questions on Waste Management, the topic  
10          is closed and we're going to move on.

11          The next topic is Visual Resources.

12          Mr. Galati, do you have exhibits on  
13          Visual Resources?

14          APPLICANT COUNSEL GALATI: Yes, I do.  
15          At this time I'd like to call up Dr. Mudry, who  
16          has previously been sworn, and he will be  
17          sponsoring the testimony on Visual Resources.

18          HEARING OFFICER GEFTER: Oh, that's  
19          right, we closed on Waste.

20          All right. Go ahead.  
21          Whereupon,

22                         DWIGHT MUDRY  
23          Was recalled as a witness herein and, having been  
24          previously sworn, was examined and testified  
25          further as follows:

1 DIRECT EXAMINATION

2 BY APPLICANT COUNSEL GALATI:

3 Q Dr. Mudry, are you familiar with  
4 Exhibit 39, your previously filed testimony on  
5 Visual Resources?

6 A Yes, I am.

7 Q And in that testimony, did you provide  
8 an objection to language specifically with Vis 5?

9 A Yes. It was actually recently submitted  
10 testimony of Mr. Birdsall, and he suggested some  
11 language changes for Vis 5, and we are in complete  
12 agreement with those changes.

13 APPLICANT COUNSEL GALATI: And I  
14 believe, for the record, that Dr. Mudry is  
15 referring to a portion of Exhibit 54, which is  
16 Staff supplemental sponsored testimony and  
17 rebuttal testimony.

18 BY APPLICANT COUNSEL GALATI:

19 Q With those modifications, do you have  
20 any additional modifications to previously filed  
21 testimony, Dr. Mudry?

22 A No.

23 APPLICANT COUNSEL GALATI: In addition  
24 to Exhibit 39, Dr. Mudry is sponsoring a portion  
25 of Exhibit 1, Ms. Gefter, section 5.10, and

1 section 6.5.10 of table 6.1-1; a portion of  
2 Exhibit 2, specifically response Vis 1 through  
3 Vis 4; a portion of Exhibit 3, specifically  
4 response numbers 117 through 130; and a portion of  
5 Exhibit 4, specifically response numbers 283  
6 through 288.

7 I would ask that those exhibits, along  
8 with Exhibit 39, as modified, be entered into the  
9 record.

10 HEARING OFFICER GEFTER: Okay. Any  
11 objections?

12 STAFF COUNSEL HOUCK: No objections from  
13 Staff.

14 INTERVENOR SARVEY: No objections.

15 INTERVENOR BOYD: No objections.

16 HEARING OFFICER GEFTER: All right.  
17 Exhibit 39, as modified with the new language for  
18 condition Vis 5, and the other exhibits identified  
19 by Mr. Galati related to Visual Resources are now  
20 received into the record.

21 (Thereupon Exhibit 39 and portions of  
22 Exhibits 1-4 were received into evidence.)

23 HEARING OFFICER GEFTER: Staff?

24 STAFF COUNSEL HOUCK: All right, thank  
25 you.



1       Whereupon,

2                       JACK CASWELL

3       Was recalled as a witness herein and, having been  
4       previously sworn, was examined and testified  
5       further as follows:

6               STAFF COUNSEL HOUCK:  Mr. Caswell is  
7       here, and it is my understanding that Mr. Sarvey  
8       will have a brief question for him that we are  
9       prepared to answer.

10              We would ask that Exhibit 51, section  
11       4.11; Exhibit 52, section 2.11; and Exhibit 54,  
12       page 16 regarding Visual Resources be entered into  
13       evidence, and that does include the supplemental  
14       testimony of Mr. Birdsall that Mr. Greenberg  
15       referred to.

16              HEARING OFFICER GEFTER:  Okay.  Any  
17       objection?

18              APPLICANT COUNSEL GALATI:  No objection.

19              INTERVENOR SARVEY:  No objection.

20              INTERVENOR BOYD:  No objection.

21              HEARING OFFICER GEFTER:  The exhibits  
22       that Ms. Houck just referred to related to Visual  
23       Resources are now received into the record.

24              (Thereupon portions of Exhibits 51 & 54  
25       were received into evidence.)

1 HEARING OFFICER GEFTER: Mr. Sarvey, do  
2 you have cross-examination of Mr. Caswell?

3 INTERVENOR SARVEY: Yeah, just a couple  
4 of quick questions.

5 CROSS-EXAMINATION

6 BY INTERVENOR SARVEY:

7 Q My first question is, is it Staff's  
8 conclusion that this project has a significant  
9 adverse impact to Visual Resources?

10 A It was not their final conclusion. In  
11 their assessment there were identified significant  
12 impacts, but those impacts were mitigated with the  
13 conditions.

14 Q And were those conditions the  
15 landscaping conditions?

16 A Correct.

17 Q Okay. And did Staff consult any local  
18 residents as far as visual concern in their  
19 analyses, or maybe that's a question you can't  
20 answer.

21 A You know, I don't believe they did. I  
22 was involved with negotiations with the  
23 involvement of the U.S. Fish and Wildlife Service,  
24 California Department of Fish and Game, the  
25 Applicant, our staff, our biologists as well as

1       our visual staff all were involved in the drafting  
2       of the visual conditions so there wouldn't be any  
3       conflict with the biological resources in the  
4       area.

5               INTERVENOR SARVEY: Thank you very much.

6               HEARING OFFICER GEFTER: With that, the  
7       topic of Visual Resources is closed.

8               The next topic is Noise and Vibration.

9               Mr. Galati?

10              APPLICANT COUNSEL GALATI: Thank you,  
11       Ms. Gefter. Dwight Mudry will again sponsor  
12       Exhibit 40, which is entitled testimony of Thomas  
13       Adams.  
14       Whereupon,

15                      DWIGHT MUDRY

16       Was recalled as a witness herein and, having been  
17       previously sworn, was examined and testified  
18       further as follows:

19                      DIRECT EXAMINATION

20       BY APPLICANT COUNSEL GALATI:

21              Q     Dr. Mudry, are you familiar with  
22       Exhibit 40?

23              A     Yes, I am.

24              Q     Do you have any changes or modifications  
25       to that testimony?

1           A     No, I don't.

2                   APPLICANT COUNSEL GALATI:  Ms. Gefter,  
3     Exhibit 40 of Tom Adams also sponsors a portion of  
4     Exhibit 1, specifically AFC section 5.1 -- excuse  
5     me, 5.9; table 6.1-1, specifically section 6.5.9;  
6     a portion of Exhibit 2, Noise 1 through Noise 3  
7     responses; a portion of Exhibit 3, specifically  
8     response numbers 106 through 110.

9                   I would ask that those exhibits, in  
10    addition to Exhibit 40, be admitted into evidence  
11    at this time.

12                  HEARING OFFICER GEFTER:  Any objection?

13                  STAFF COUNSEL HOUCK:  No objection.

14                  INTERVENOR BOYD:  I had some questions.  
15    I don't know if this is the appropriate time?

16                  HEARING OFFICER GEFTER:  You will have  
17    an opportunity to do cross-examination.  Do you  
18    have any objection to Exhibit 40?

19                  INTERVENOR BOYD:  Not at all.

20                  HEARING OFFICER GEFTER:  All right.  At  
21    this point Exhibit 40 and the other exhibits  
22    identified by Mr. Galati related to Noise and  
23    Vibration are received into the record.

24                  (Thereupon Exhibit 40 and portions of  
25    Exhibits 1-3 were received into evidence.)

1 HEARING OFFICER GEFTER: Is your witness  
2 available for cross-examination?

3 APPLICANT COUNSEL GALATI: Again, this  
4 was sponsored on a declaration.

5 HEARING OFFICER GEFTER: Right.

6 APPLICANT COUNSEL GALATI: We do have  
7 Dr. Mudry here, who is not our expert on Noise,  
8 but will try to answer questions if necessary.

9 HEARING OFFICER GEFTER: Okay. Because  
10 Mr. Boyd had indicated that he did have cross-  
11 examination on this topic. We'll see what  
12 happens.

13 Mr. Boyd?

14 INTERVENOR BOYD: It may be more  
15 appropriate for Mr. McCloud to answer, since my  
16 questions are going to be targeted towards  
17 biological impacts of noise. It's up to your  
18 discretion.

19 APPLICANT COUNSEL GALATI: We would be  
20 prepared to answer biological impacts associated  
21 with Noise in our testimony and in the subject  
22 matter Biological Resources where we are bringing  
23 our appropriate experts.

24 INTERVENOR BOYD: That's fine with me,  
25 if that's what you prefer. I'll defer my

1 questions for then, but specifically, that's the  
2 noise impacts that I was concerned with. I didn't  
3 want to preclude those from being discussed under  
4 Biology.

5 HEARING OFFICER GEFTER: Okay.

6 INTERVENOR BOYD: So I thought it would  
7 be appropriate to raise it here.

8 HEARING OFFICER GEFTER: The topic of  
9 Biology is tomorrow. Will you be here tomorrow?

10 INTERVENOR BOYD: Certainly.

11 HEARING OFFICER GEFTER: Okay.

12 INTERVENOR BOYD: And our expert will be  
13 here as well, but since the Noise topic was today,  
14 I thought it would be appropriate to raise our  
15 concerns, and maybe you'll address it tomorrow.

16 HEARING OFFICER GEFTER: Okay. So  
17 Mr. Boyd will ask his questions about noise  
18 related to Biology tomorrow.

19 Now, Staff on the topic of Noise and  
20 Vibration?  
21 Whereupon,

22 JACK CASWELL

23 Was recalled as a witness herein and, having been  
24 previously sworn, was examined and testified  
25 further as follows:

## 1 DIRECT EXAMINATION

2 BY STAFF COUNSEL HOUCK:

3 Q Mr. Caswell, are you familiar with the  
4 Noise testimony?

5 A I am.

6 Q Does Staff have any changes to that  
7 testimony?

8 A We do not.

9 STAFF COUNSEL HOUCK: Staff would like  
10 to enter Exhibit 51, section 4.6, and Exhibit 52,  
11 section 2.6 into the record.

12 HEARING OFFICER GEFTER: Any objection?

13 APPLICANT COUNSEL GALATI: No objection.

14 HEARING OFFICER GEFTER: Any objection  
15 from the Intervenors?

16 INTERVENOR SARVEY: No objection.

17 INTERVENOR BOYD: No objection.

18 HEARING OFFICER GEFTER: Okay. The  
19 exhibits identified by Ms. Houck related to Noise  
20 and Vibration are now received into the record.21 (Thereupon portions of Exhibits 51 & 52  
22 were received into evidence.)23 HEARING OFFICER GEFTER: The topic of  
24 Noise is now closed.

25 The next topic is Traffic and

1 Transportation.

2 APPLICANT COUNSEL GALATI: Yes.

3 Whereupon,

4 DWIGHT MUDRY

5 Was recalled as a witness herein and, having been  
6 previously sworn, was examined and testified  
7 further as follows:

8 STAFF COUNSEL HOUCK: We have again  
9 Dr. Mudry sponsoring this testimony.

10 HEARING OFFICER GEFTER: All right.

11 DIRECT EXAMINATION

12 BY APPLICANT COUNSEL GALATI:

13 Q Dr. Mudry, are you familiar with  
14 Exhibit 41, which is identified as the testimony  
15 of Dwight Mudry, Scott Busa, Zoran Rausavljevich  
16 entitled Traffic and Transportation?

17 A Yes, I am.

18 Q In addition, there was rebuttal  
19 testimony filed as Exhibit 156, which is entitled  
20 Rebuttal Testimony of Dwight Mudry, Zoran  
21 Rausavljevich and Scott Busa; are you familiar  
22 with that testimony as well?

23 A Yes.

24 APPLICANT COUNSEL GALATI: Excuse me,  
25 Ms. Hearing Officer Gefter?



1 HEARING OFFICER GEFTER: Yes?

2 APPLICANT COUNSEL GALATI: We modified  
3 our, by taking our rebuttal testimony and moving  
4 it to Hazardous Materials, as already stated on  
5 the record.

6 HEARING OFFICER GEFTER: Okay. Why  
7 don't you explain that. Just explain what  
8 happened there.

9 APPLICANT COUNSEL GALATI: Let me ask  
10 Scott Busa to do this, then.  
11 Whereupon,

12 SCOTT BUSA  
13 Was recalled as a witness herein and, having been  
14 previously sworn, was examined and testified  
15 further as follows:

16 APPLICANT COUNSEL GALATI: Mr. Busa has  
17 previously been sworn.

18 DIRECT EXAMINATION

19 BY APPLICANT COUNSEL GALATI:

20 Q Mr. Busa, are you familiar with the  
21 modifications that we discussed earlier today  
22 about the hazardous materials route?

23 A Yes. On Trans 4, yes, I am.

24 Q And is it your understanding that our  
25 comments and modifications to Trans 4 would now be

1 put to a new condition called Haz 12?

2 A Yes, I understand that.

3 Q And, subject to your reviewing the  
4 specific language, with the route identified and  
5 discussed by Dr. Greenberg, do you agree with that  
6 route in Haz 12?

7 A Yes, I agree with that route.

8 Q And does that satisfy any of your  
9 concerns with respect to the rebuttal testimony,  
10 specifically to modifications to Trans 4?

11 A Trans 4 would be acceptable with the  
12 wording suggested earlier.

13 Q And if Haz 12 took the place of Trans 4,  
14 do you believe that Trans 4 should be deleted?

15 A Yes, it's duplicative.

16 HEARING OFFICER GEFTER: Okay. Although  
17 Trans 4 had two parts, so only the part related to  
18 the haz mat route would be deleted. The remaining  
19 language -- I'm sorry, yes, to Trans 4 would  
20 remain, right?

21 APPLICANT COUNSEL GALATI: Oh, okay. We  
22 agree --

23 BY APPLICANT COUNSEL GALATI:

24 Q Mr. Busa, do you agree to the language  
25 of Trans 4 not specifying the route in the

1 language just immediately prior to the  
2 specification of the route?

3 A Yes, we have no objection to that.

4 Q With those changes, are you familiar  
5 with the other modifications that we've asked for?

6 A Yes. We've asked for some clarification  
7 on Trans 1 and Trans 6 also in our rebuttal  
8 testimony.

9 APPLICANT COUNSEL GALATI: Ms. Gefter,  
10 I'll just submit that, unless the Committee has  
11 any particular questions about those changes. I  
12 know that Staff does not have their witness here.

13 HEARING OFFICER GEFTER: Okay. Now,  
14 you're asking for modifications to Trans 1?

15 APPLICANT COUNSEL GALATI: Correct,  
16 Trans 1 and Trans 6.

17 HEARING OFFICER GEFTER: Okay, and my  
18 question is whether Staff has any objection or  
19 comments on those requested modifications?

20 STAFF COUNSEL HOUCK: We have no  
21 objection to the addition of Haz 12 and the  
22 deletions of the portion of Trans 4 that the  
23 Applicant discussed. We do not have an objection  
24 to the changes to Trans 6.

25 Our witness was not available today.

1       There are some other minor changes that would need  
2       to be made to the conditions of certification that  
3       I believe the Committee had requested Staff to  
4       resubmit in writing. Staff would ask that the  
5       issue regarding Trans 1 be deferred until first  
6       thing tomorrow morning and we would have an answer  
7       on the record at that time.

8               HEARING OFFICER GEFTER: All right. So  
9       my understanding, then, from your comments are  
10      that the modifications requested by the Applicant  
11      for condition Trans 6 are acceptable to Staff.

12             STAFF COUNSEL HOUCK: That is my  
13      understanding, yes.

14             HEARING OFFICER GEFTER: All right. And  
15      we'll confirm that tomorrow morning with your  
16      Traffic witness?

17             STAFF COUNSEL HOUCK: Yes, we can do  
18      that on the record.

19             HEARING OFFICER GEFTER: All right. So  
20      why don't we, first of all, do you want to move  
21      your exhibits?

22             APPLICANT COUNSEL GALATI: Yes, I --  
23      Actually, I'd prefer to modify them with the  
24      opportunity of hearing what Staff has to say  
25      before I move them into evidence.

1 HEARING OFFICER GEFTER: All right.

2 APPLICANT COUNSEL GALATI: Could we just  
3 leave that open until then?

4 HEARING OFFICER GEFTER: Okay. So that  
5 will be open.

6 And Staff, do you want to move your  
7 exhibits or do you want to wait until tomorrow  
8 when your Traffic witness is available?

9 STAFF COUNSEL HOUCK: If the Committee  
10 prefers, we can wait until tomorrow. We will be  
11 asking that Appendix C of FSA Addendum 2 replace  
12 the Traffic and Transportation section within  
13 Exhibit 51.

14 HEARING OFFICER GEFTER: Okay.

15 STAFF COUNSEL HOUCK: So if the  
16 Committee prefers, we could request that that be  
17 entered with the understanding that we will  
18 address the open issues tomorrow, or we can wait  
19 until tomorrow.

20 HEARING OFFICER GEFTER: Yes, why don't  
21 we do that, because then you'll have your witness.

22 Okay, but you're saying Appendix C of  
23 which exhibit, is that of Exhibit 53?

24 STAFF COUNSEL HOUCK: It's of  
25 Exhibit 53, and then we would also have section

1 2.9 of Exhibit 52.

2 HEARING OFFICER GEFTER: All right. If  
3 you could again repeat that tomorrow morning in  
4 conjunction with presenting your witness on  
5 Traffic, that would be helpful to the record.

6 So what we're doing now is we're leaving  
7 the topic of Traffic and Transportation open until  
8 tomorrow. And at this point we can move on to the  
9 next topic, and that topic is Compliance.

10 Applicant, do you have any exhibits on  
11 that topic?

12 APPLICANT COUNSEL GALATI: Yes. We have  
13 Exhibit 42, the testimony of Scott Busa. He has  
14 previously been sworn.  
15 Whereupon,

16 SCOTT BUSA

17 Was recalled as a witness herein and, having been  
18 previously sworn, was examined and testified  
19 further as follows:

20 DIRECT EXAMINATION

21 BY APPLICANT COUNSEL GALATI:

22 Q Are you, Mr. Busa, familiar with  
23 Exhibit 42?

24 A Yes, I am.

25 Q Do you have any changes or modifications

1 to that exhibit at this time?

2 A No, I do not.

3 APPLICANT COUNSEL GALATI: Ms. Gefter,  
4 particularly Exhibit 1, Mr. Busa is also  
5 sponsoring a portion of that exhibit, the AFC LORS  
6 table, table 6.1-1. I would ask that Exhibit 42  
7 and that portion of Exhibit 1 previously mentioned  
8 be moved into the record as evidence.

9 HEARING OFFICER GEFTER: Any objection?

10 STAFF COUNSEL HOUCK: No objection.

11 HEARING OFFICER GEFTER: Intervenors?

12 INTERVENOR SARVEY: No objection.

13 INTERVENOR BOYD: No objection.

14 HEARING OFFICER GEFTER: Okay.

15 Exhibit 42 and the other exhibit identified by  
16 Mr. Galati related to Compliance is received in  
17 the record.

18 (Thereupon Exhibit 42 and a portion of  
19 Exhibit 1 was received into evidence.)

20 HEARING OFFICER GEFTER: Staff?

21 STAFF COUNSEL HOUCK: Staff would  
22 request that section 7 of Exhibit 51 be entered  
23 into evidence.

24 HEARING OFFICER GEFTER: Any objection?

25 APPLICANT COUNSEL GALATI: No objection.

1 INTERVENOR SARVEY: No objection.

2 INTERVENOR BOYD: No objection.

3 HEARING OFFICER GEFTER: Okay. The

4 exhibit identified by Ms. Houck related to

5 Compliance is received into the record.

6 (Thereupon a portion of Exhibit 51 was  
7 received into evidence.)

8 HEARING OFFICER GEFTER: A question for  
9 the Applicant regarding Compliance. Those are the  
10 general terms and conditions of Construction  
11 Operation as proposed by Staff. Does the  
12 Applicant have any objection and do you intend to  
13 comply? What is your position on those  
14 conditions?

15 APPLICANT COUNSEL GALATI: I believe  
16 that -- Mr. Busa, could you refer to Exhibit 42?

17 WITNESS BUSA: Yes. In my testimony,  
18 under opinions and conclusions, we do concur that  
19 we will abide by the conditions of certifications,  
20 general conditions including the compliance  
21 monitoring and closure plan are acceptable to us.

22 HEARING OFFICER GEFTER: With that, the  
23 section on Compliance, that topic is closed.

24 INTERVENOR SARVEY: I have cross-  
25 examination.



1 HEARING OFFICER GEFTER: Okay, you have  
2 cross-examination?

3 INTERVENOR SARVEY: Yes, I do.

4 HEARING OFFICER GEFTER: Okay.  
5 Mr. Sarvey?

6 INTERVENOR SARVEY: This is for the  
7 Applicant. I have some Compliance questions for  
8 Staff as well.

9 CROSS-EXAMINATION

10 BY INTERVENOR SARVEY:

11 Q What facilities does the Applicant own  
12 and operate in the State of California?

13 A I don't have a complete list in front of  
14 me, but I can name some of those facilities. We  
15 operate wind turbines in the Altamonte Pass under  
16 several different company names. We operate the  
17 POSDEF facility in Stockton, the Port of Stockton  
18 Distributed Energy Facility. We operate a solar  
19 plant outside of Barstow, California, segs 8 and 9  
20 I believe is the correct terminology for that.

21 We operate a number of wind projects in  
22 the Tehachapi Pass, and we are also finishing  
23 construction on the Blythe Power Project,  
24 Blythe 1.

25 Q Can you mention any notices of violation

1 for your POSDEF facility in Stockton in the last  
2 two years?

3 APPLICANT COUNSEL GALATI: At this point  
4 I would object to what the relevance is of notices  
5 of violation of particular FPL facilities.

6 INTERVENOR SARVEY: Well, we're asking  
7 the Applicant to comply with conditions of  
8 certification. I would like to establish its  
9 record.

10 HEARING OFFICER GEFTER: In relation to  
11 what, just violations?

12 INTERVENOR SARVEY: Compliance.

13 HEARING OFFICER GEFTER: But which  
14 entity?

15 INTERVENOR SARVEY: Compliance with the  
16 Air District, rules and regulation, CEC --

17 HEARING OFFICER GEFTER: You're talking  
18 about Air District --

19 INTERVENOR SARVEY: -- and CEC  
20 regulations or conditions of certification as  
21 well.

22 APPLICANT COUNSEL GALATI: Ms. Gefter,  
23 if I could add that this is probably more properly  
24 handled in Air Quality. We will have witnesses  
25 available who can testify what a notice of

1 violation is. The District representatives will  
2 be present, and the general area of compliance  
3 monitoring closure plan deals with the  
4 communication between the Energy Commission and  
5 the compliance project manager. And general  
6 conditions on what happens if you're out of  
7 compliance with the conditions.

8 INTERVENOR SARVEY: That's exactly the  
9 issue.

10 HEARING OFFICER GEFTER: Okay. I just  
11 have a question, Mr. Sarvey. Perhaps we could  
12 narrow down your question. When you were asking  
13 Mr. Busa what facilities they operate within the  
14 state, whether any of those facilities have been  
15 certified by the Energy Commission, because I  
16 don't recognize some of them.

17 INTERVENOR SARVEY: I think compliance  
18 in their facilities in general with any agency or  
19 CEC are relevant to this discussion. Not just the  
20 CEC. I mean, they operate in Florida and there  
21 they're subject to certain conditions by  
22 permitting agencies there, and do they comply to  
23 those? Do they comply with their existing  
24 facilities in the State of California? Whether  
25 the CEC licenses them or not is irrelevant.

1 HEARING OFFICER GEFTER: Okay. So  
2 you're looking for a pattern, is that what you're  
3 looking for?

4 INTERVENOR SARVEY: Exactly. That's  
5 what I'm trying to establish.

6 HEARING OFFICER GEFTER: All right.  
7 Okay, well, let's distinguish here between notice  
8 of violation as related to Air District  
9 violations, because that can be taken up under the  
10 Air Quality topic.

11 INTERVENOR SARVEY: Okay. Well, I'll  
12 deal with notices of violation in general, then.

13 HEARING OFFICER GEFTER: Well, I'm  
14 not -- General seems to be too broad. We're  
15 talking about operating a gas-fired power plant  
16 facility in the State of California. So narrow  
17 down your question to talking about in California.

18 INTERVENOR SARVEY: The Applicant's  
19 compliance history in Florida is not relevant?

20 HEARING OFFICER GEFTER: I think you're  
21 pushing it if you start to ask about that. Do you  
22 have any information or are you just sort of --

23 INTERVENOR SARVEY: I have several  
24 exhibits here that are related to compliance.

25 HEARING OFFICER GEFTER: All right.

1 INTERVENOR SARVEY: One is the segs  
2 eight and nine facility that he just mentioned  
3 that has been out of -- well, I'll be testifying  
4 if I say that, but five of the last eight quarters  
5 it's been out of compliance with its permitting  
6 conditions.

7 HEARING OFFICER GEFTER: I'm sorry?

8 INTERVENOR SARVEY: Five out of the last  
9 eight quarters it's been out of compliance with  
10 its permit conditions, according to the Echo EPA  
11 enforcement and compliance history.

12 HEARING OFFICER GEFTER: Okay. Is that  
13 air quality?

14 INTERVENOR SARVEY: This particular is  
15 part of the Clean Air Act, yeah. That's part of  
16 the violations.

17 HEARING OFFICER GEFTER: Okay.

18 APPLICANT COUNSEL GALATI: Is this an  
19 exhibit?

20 INTERVENOR SARVEY: Yes, it is. It's  
21 Exhibit -- Oh, actually, no, I apologize, it's not  
22 an exhibit, it's something I just got on line  
23 yesterday.

24 HEARING OFFICER GEFTER: Okay.

25 APPLICANT COUNSEL GALATI: Again, I

1 would renew my objection for limiting scope here.

2 The general --

3 HEARING OFFICER GEFTER: Well, we  
4 already limited it and we're not going to talk  
5 about any NOV's at this point in the context of  
6 discussing compliance. We'll do that tomorrow, or  
7 not tomorrow but on the 18th when we discuss air  
8 quality.

9 Anything else, Mr. Sarvey?

10 INTERVENOR SARVEY: Oh, yeah.

11 HEARING OFFICER GEFTER: Okay.

12 BY INTERVENOR SARVEY:

13 Q I would call your attention to  
14 Exhibit 74(a).

15 APPLICANT COUNSEL GALATI: May I have a  
16 moment so I could have those exhibits in front of  
17 me?

18 INTERVENOR SARVEY: Here you go.

19 APPLICANT COUNSEL GALATI: No, I have  
20 them.

21 INTERVENOR SARVEY: I would just like to  
22 ask a question about that exhibit.

23 HEARING OFFICER GEFTER: Okay. Now,  
24 this is an exhibit from the Sierra Club?

25 INTERVENOR SARVEY: No, it's not.

1 HEARING OFFICER GEFTER: 74(a)?

2 INTERVENOR SARVEY: It's this one.

3 HEARING OFFICER GEFTER: What number do  
4 you have on there?

5 STAFF COUNSEL HOUCK: It's from the  
6 Department of Energy of Massachusetts.

7 HEARING OFFICER GEFTER: Yeah, we need  
8 to just know what exhibit --

9 INTERVENOR SARVEY: Oh, okay. I see now  
10 there is confusion in my exhibits here.

11 HEARING OFFICER GEFTER: Is this  
12 something that you have already submitted to us,  
13 Mr. Sarvey?

14 INTERVENOR SARVEY: Yes, it is. It's a  
15 Department of Energy newsletter basically. It's  
16 FPL Energy Systems delayed notification to the  
17 DEP, fined \$750.

18 APPLICANT COUNSEL GALATI: I don't have  
19 that exhibit. Mine has a gap between 73 and 75.

20 INTERVENOR SARVEY: Well, we'd better  
21 get some copies on that one, then.

22 STAFF COUNSEL HOUCK: Yes, so does mine.  
23 I don't seem to have that one.

24 HEARING OFFICER GEFTER: We're off the  
25 record.

1 (Thereupon a recess was taken.)

2 HEARING OFFICER GEFTER: Okay. Before  
3 we continue, we need to clear up the exhibit list  
4 a bit. Looking at Exhibit 98, Mr. Sarvey had  
5 earlier requested that Exhibit 98 be the testimony  
6 of Mr. Schneider; however, that testimony had  
7 already been identified as Exhibit 75(b). And so  
8 Mr. Schneider's testimony will be 75(b) in the  
9 exhibit list.

10 (Thereupon Exhibit 98 was reassigned for  
11 identification.)

12 HEARING OFFICER GEFTER: And 98 will be  
13 this new item that Mr. Sarvey has identified and  
14 the title is the EP News, Massachusetts Department  
15 of Environmental Protection. That is identified  
16 as Exhibit 98.

17 Mr. Sarvey, you can tell us where this  
18 document came from, and then I'll take objections  
19 from the parties.

20 INTERVENOR SARVEY: Okay. It came from  
21 the Department of Environmental Protection  
22 newsletter dated 11/12/01, and it's a copy of the  
23 DEP newsletter.

24 HEARING OFFICER GEFTER: And where did  
25 you get it?



1 INTERVENOR SARVEY: I received it over  
2 the Internet.

3 HEARING OFFICER GEFTER: You took it off  
4 the Internet?

5 INTERVENOR SARVEY: Yes.

6 HEARING OFFICER GEFTER: All right. Any  
7 objections to this exhibit?

8 APPLICANT COUNSEL GALATI: Yes. I  
9 object to this exhibit, first on the grounds of  
10 relevance. The compliance history of the company  
11 in other states I believe is irrelevant to these  
12 proceedings. What is being licensed is the Tesla  
13 Power Project subject to conditions. The  
14 conditions, whether it's this applicant or other  
15 applicants, would apply. The Commission would  
16 then enforce those conditions, and a compliance  
17 history is only relevant to the extent that an air  
18 district can issue a certificate of compliance for  
19 purposes of a valid FDOC. It's the only time that  
20 the Commission has allowed that kind of testimony  
21 to be relevant.

22 That, I again submit, is to be properly  
23 handled under Air Quality, or we could go through  
24 FPL and FPL subsidiaries and the parent and other  
25 corporate structure items for quite some time, and

1 I don't believe that they bear any relevance on  
2 the Commission's decision to hear whether the  
3 Tesla Power Project is appropriately conditioned  
4 to result in no impact and to provide a reliable  
5 source of power.

6 HEARING OFFICER GEFTER: Staff, do you  
7 have any objection to this document?

8 STAFF COUNSEL HOUCK: I'm not clear if  
9 this is a complete document. It seems to end  
10 halfway through a sentence, and I don't know if  
11 that's just because it didn't print on the full  
12 page. And I believe that it is more appropriate  
13 for Air Quality, if we are going to get into these  
14 issues.

15 As to the matter of relevance, we'll  
16 submit that to the Committee, but we would at  
17 least like to have a complete article to look at.  
18 I'm not sure where this ends.

19 APPLICANT COUNSEL GALATI: In addition,  
20 I would like to add to the objection that it is  
21 hearsay and not corroborated individually by any  
22 other sworn testimony.

23 HEARING OFFICER GEFTER: Well, I'm going  
24 to sustain the objection on that ground,  
25 Mr. Galati, because the document was taken off of

1 the Internet and you cannot vouch for the truth of  
2 the matter stated in the document.

3 And the relevance is attenuated at this  
4 point. This was from 2001 and we're in California  
5 in 2003, and we're the regulatory agency here and  
6 not the Massachusetts Department of Environmental  
7 Protection.

8 So on that ground, we are not going to  
9 accept this document. But, Mr. Sarvey, you may  
10 continue asking the questions you have of the  
11 Applicant on the compliance issue, if you have  
12 additional questions.

13 INTERVENOR SARVEY: Well, I'm just  
14 trying to point out the relevance of my exhibits  
15 here. It seems I'm being defeated in that  
16 purpose. Like I said, I have a compliance  
17 document on the segs 8 and 9 violations that they  
18 own, and that's compliance, and it's in the State  
19 of California.

20 HEARING OFFICER GEFTER: All right.

21 INTERVENOR SARVEY: I don't understand  
22 what the objection is to this --

23 HEARING OFFICER GEFTER: That is a  
24 different issue, a different document. Do you  
25 have evidence of that?

1 INTERVENOR SARVEY: Yes, I do.

2 HEARING OFFICER GEFTER: And have we had  
3 that moved into the record?

4 INTERVENOR SARVEY: No. I'll present  
5 you with it, though.

6 HEARING OFFICER GEFTER: We need to  
7 identify that and give copies to the parties. So  
8 Exhibit 98 will not be part of the record.

9 (Thereupon Exhibit 98 was rejected from  
10 the record.)

11 HEARING OFFICER GEFTER: So this is a  
12 new document that you have? Three pages, a three-  
13 page document?

14 INTERVENOR SARVEY: Three pages,  
15 correct.

16 HEARING OFFICER GEFTER: Okay. We're  
17 going to identify this as Exhibit 99. This will  
18 be Exhibit 99 and it is entitled U.S.  
19 Environmental Protection Agency, Enforcement of  
20 Compliance History Online. And, Mr. Sarvey, where  
21 did you get this document?

22 INTERVENOR SARVEY: Online in the EP  
23 Echo web site.

24 HEARING OFFICER GEFTER: Okay, and is  
25 this related to air quality violations?

1 INTERVENOR SARVEY: Yes, it is. Should  
2 I have presented it --

3 HEARING OFFICER GEFTER: Yes, we're  
4 going to talk about these during the course of the  
5 testimony on Air Quality.

6 INTERVENOR SARVEY: Okay. I'll deal  
7 with that one then.

8 HEARING OFFICER GEFTER: Okay. This  
9 will be identified Exhibit 99 and then at that  
10 time you can move this exhibit and we will accept  
11 objections as well.

12 (Thereupon Exhibit 99 was identified.)

13 STAFF COUNSEL HOUCK: Ms. Gefter, the  
14 Staff does not have a copy of that exhibit.

15 HEARING OFFICER GEFTER: Okay. Do you  
16 want to --

17 INTERVENOR SARVEY: I'll provide a copy  
18 when we go into Air Quality.

19 STAFF COUNSEL HOUCK: Then we will defer  
20 any objections to that time.

21 HEARING OFFICER GEFTER: Anything else,  
22 Mr. Sarvey?

23 BY INTERVENOR SARVEY:

24 Q Can you tell the Committee about the  
25 violations of the Clean Water Act at your Sanford

1 Power Plant?

2 APPLICANT COUNSEL GALATI: Again, I  
3 object. I first need to ask where is Sanford?

4 THE WITNESS: Our Sanford Power Plant  
5 would be in Sanford, Florida.

6 APPLICANT COUNSEL GALATI: Okay. Then I  
7 would object as to relevance.

8 INTERVENOR SARVEY: It's again just  
9 complying with conditions on the projects of FPL.

10 HEARING OFFICER GEFTER: Well, again, we  
11 don't have any information as to the time frame  
12 for that or what the conditions of certification  
13 were or who certified that plant. It seems very  
14 attenuating to our process here in California.

15 THE WITNESS: Facilities have existed in  
16 Sanford for over 50 years, power plants there.

17 HEARING OFFICER GEFTER: And what  
18 violations are you referring to, Mr. Sarvey? What  
19 are the dates? Are they recent?

20 INTERVENOR SARVEY: I'm asking the  
21 Applicant is he aware of any violations and would  
22 he like to explain them. That's all I'm asking.  
23 He could say yes, he could say no, he can do  
24 whatever he likes.

25 HEARING OFFICER GEFTER: I'm going to

1 just end the line of questioning because it's too  
2 wide-ranging and we are on the topic of Compliance  
3 here with this particular power plant, with this  
4 particular jurisdiction, with this particular  
5 governmental agency. And if you have more  
6 information on them and you can specify your  
7 questions, then we would allow it, but at this  
8 point it's too wide-ranging.

9 INTERVENOR SARVEY: I'll just note an  
10 objection on the record to that, thank you.

11 HEARING OFFICER GEFTER: Okay. Thank  
12 you, Mr. Sarvey.

13 Mr. Boyd?

14 INTERVENOR BOYD: I just have a  
15 procedural question. In our mind the issue of the  
16 ability of the Applicant to comply with a  
17 condition of the certification and LORS,  
18 specifically laws, ordinances, regulations and  
19 standards, should be relevant to the issue of  
20 corporate character, what we call corporate  
21 character.

22 HEARING OFFICER GEFTER: I'm not sure  
23 what that is.

24 INTERVENOR BOYD: And what I mean by  
25 that is the ability of that corporation to comply

1 with permits and regulations and standards  
2 attached to the projects that it owns, operates  
3 and develops. And in order to establish that  
4 character, I don't understand why it's not  
5 relevant to raise specific citation, whether it be  
6 from the newspaper article or from the  
7 Environmental Protection Agency's web site, or, in  
8 this case, clearly it's a Department of  
9 Environmental Protection in the State of  
10 Massachusetts, another regulatory agency.

11 I don't understand how that's irrelevant  
12 to the issue of compliance. And I would like to  
13 know where appropriately those issues would be  
14 raised. For example, this one here they're  
15 talking about a water issue, not an air issue.  
16 And so the question is --

17 HEARING OFFICER GEFTER: You're  
18 referring to Exhibit 98?

19 INTERVENOR BOYD: Yeah, on the back page  
20 they're talking about, it says the parties have  
21 violated the Clean Water Act.

22 So my question is if, as Mr. Sarvey,  
23 Intervenor Sarvey has attempted to make part of  
24 your administrative records the fact of these  
25 specific instances of possible noncompliance, if



1       this isn't the appropriate place to raise it in  
2       the record, then where is it?

3               HEARING OFFICER GEFTER:   Okay.   Well, I  
4       can understand your frustration, because the  
5       concerns you're raising are common-sense concerns,  
6       that a particular entity may not be able to comply  
7       with rules and regulations that they've agreed to  
8       comply with; however, if this project is  
9       certified, the Energy Commission imposes certain  
10      conditions of certification.   If the company  
11      doesn't comply with those conditions, then they  
12      would be in violation and the agency would then  
13      impose the fees and fines or otherwise penalize  
14      the company as set forth in the conditions of  
15      certification.

16             So what we're looking at in this case is  
17      the company has agreed to abide by the conditions  
18      of certification as proposed by Staff and adopted  
19      by the Commission and those would be the  
20      conditions.   And if they don't comply with those  
21      conditions, then there are methods to enforce  
22      them.   And that is what we are looking at in this  
23      particular proceeding.

24             Again, I understand that you're  
25      frustrated and you feel that we should be looking

1 at a bigger picture, but this is an evidentiary  
2 proceeding and we need to stick with the formal  
3 rules of evidence.

4 INTERVENOR SARVEY: I would just like to  
5 object for the record. I feel I'm being given an  
6 unfair hearing, thank you.

7 INTERVENOR BOYD: Well, respectfully I  
8 have to object too because our perspective is we  
9 did this for the benefit of the Committee and the  
10 Commission. It would be a lot easier for us to  
11 just wait until the Presiding Member's decision  
12 comes out and we could put all of our stuff in  
13 there and go right to court, but then you guys  
14 don't have any opportunity to settle the issues  
15 that are in dispute in advance.

16 And our intent is just to raise these  
17 issues now at the appropriate time so that we can  
18 resolve them short of that and prevent what's  
19 going to cost a lot of money for everybody. We're  
20 offering this up to you. We can make you this  
21 offer of proof, we can do it however you want, but  
22 it's going to be part of the administrative record  
23 in any case. What we were hoping was that it  
24 would be part of the decisional record, and that's  
25 what our goal is here.

1           So we have to object because we feel  
2           like we're being precluded from making that part  
3           of the decisional record.

4           HEARING OFFICER GEFTER:   Okay, Mr. Boyd.  
5           What I said before is that this is an evidentiary  
6           proceeding and we need to abide by the rules of  
7           evidence, and as we ruled earlier, this particular  
8           line of questioning is beyond the scope of our  
9           proceeding.   If you want to argue about, as you  
10          call it, corporate character, you're welcome to do  
11          that.

12          INTERVENOR BOYD:   Thank you.

13          APPLICANT COUNSEL GALATI:   Ms. Gefter,  
14          if I could offer something to the Intervenors, is  
15          again, as you know, my job is to make sure the  
16          evidentiary record is the evidentiary record.   We  
17          would be more than happy to allow this document  
18          and a few others as we go through them to be  
19          submitted as Public Comment for you to take, but  
20          to have an evidentiary basis, they need to have  
21          evidentiary foundation and support.

22          If we wanted to let them in as comment,  
23          we have no problem with that so that you can  
24          consider it.

25          HEARING OFFICER GEFTER:   Okay.   And

1 we've already ruled on the evidentiary basis for  
2 these documents and we have no problem accepting  
3 these documents as part of public record.

4 I'm going to, at this point, I know that  
5 Mrs. Sarvey has been very patiently waiting to  
6 speak to us to give us public comment on the  
7 Compliance issue, so if you would like to come  
8 forward now. You are welcome to make your  
9 comments. And again, these would be Public  
10 Comments.

11 MRS. SARVEY: Susan Sarvey, Clean Air  
12 for Citizens and Legal Equality. I find this  
13 whole discussion of compliance very disturbing and  
14 confusing. In East Altamonte they were out of  
15 compliance. I proved they were out of compliance,  
16 and they were licensed while they were out of  
17 compliance. So I don't even understand the  
18 function of compliance.

19 The whole idea that you are not going to  
20 discuss their corporate record that is outside of  
21 California is appalling. That is their corporate  
22 behavior. That is akin to saying when I hire a  
23 schoolteacher in California, it does not matter if  
24 he molested children in Virginia, because it's  
25 Virginia, it's not California. That's bullshit.

1 He's a child molester.

2 If he has compliance issues in other  
3 states, we need to discuss that, get to the bottom  
4 of it, and explain to him he cannot have those  
5 issues here in California. We have serious air  
6 quality and water problems in California, and we  
7 don't need more problems. We need less problems,  
8 so let's solve the problem now.

9 This cannot be done if we do not discuss  
10 what the problem is. And I do not understand why  
11 you are not even remotely curious about what kind  
12 of problems he has.

13 And since Mr. Galati says it's okay for  
14 me to talk about it in Public Comment, the article  
15 that's been in discussion, formerly Exhibit 74(a)  
16 or 98, whatever you want to call it, it's from the  
17 Massachusetts Department of Environmental  
18 Protection. And the only paragraph I would like  
19 to read is the one that's -- I'll spell it because  
20 I cannot say it, m-o-n-o-e-t-h-a-n-o-l-o-m-i-n-e,  
21 is used by the company, FPL, to remove carbon  
22 dioxide and hydrocarbons from natural gas and is  
23 highly irritant to skin, respiratory tract, and  
24 eyes. The company failed to report the release to  
25 DEP within two hours as required under law.

1           Now, that's serious. When you're having  
2 something that affects the respiratory tract in a  
3 community that has extremely high asthma rates and  
4 respiratory illness, that is critical to us. And  
5 if they are truly planning to have a clean, safe  
6 plant, I would think they would be more than  
7 willing and open to discuss all previous problems  
8 and work with us towards making sure we don't have  
9 those problems here.

10           When you have a history of compliance  
11 problems out of state and you come in here and say  
12 it's inappropriate, we don't want to talk about  
13 it, that exhibits to me a behavior pattern of  
14 somebody who intends to go on bending the rules,  
15 breaking the law, and paying a little bit here,  
16 paying a little bit there, and going down his  
17 merry way.

18           And I find it appalling for you to be  
19 legal analysts and say that because it did not  
20 happen here yet, it's not valid. Please. Thank  
21 you.

22           PRESIDING COMMITTEE MEMBER GEESMAN: I  
23 want to be real clear: Nobody is being prevented  
24 from discussing any of these issues during Public  
25 Comment, but in order for them to get into our

1       evidentiary records, we need to follow the rules  
2       of evidence. But you're certainly welcome to  
3       raise any of these questions in Public Comment.

4               HEARING OFFICER GEFTER: And also, the  
5       members of the community are certainly welcome to  
6       talk with the Applicant and talk with Staff about  
7       your concerns and about trying to address some of  
8       the issues that you have. And I know that that's  
9       been going on during this process, and I think  
10      that discussion can continue.

11             MRS. SARVEY: But I'm hoping for you, as  
12      an expert, because I am not an expert, and you  
13      are --

14             HEARING OFFICER GEFTER: Okay,  
15      Mrs. Sarvey, we can't hear you.

16             MRS. SARVEY: As a citizen who is not a  
17      legal expert, I am looking to you to protect me.  
18      I am looking to you to ask these questions for me  
19      and find a way to make sure that these problems do  
20      not continue. For you to say it's okay for me to  
21      talk about this in Public Comment, that's great,  
22      but me talking about it in Public Comment doesn't  
23      solve the problem.

24             I don't know how to solve the problem.  
25      I don't have all of the information. You have the

1 ability to get all of the information, to get to  
2 the bottom of the issue and solve the problem.  
3 And if you're going to put a power plant, the  
4 third one in my town, and no haz mat in my town,  
5 you have a moral obligation to protect me from the  
6 fallout.

7 I'm asking you to solve the problem, not  
8 to just placate me by letting me say what is on my  
9 mind. I'm looking for someone to protect me.  
10 Thank you.

11 PRESIDING COMMITTEE MEMBER GEESMAN: We  
12 intend to address your concerns. I can't provide  
13 any assurance that you will be satisfied with the  
14 way that we do address them, but we will address  
15 your concerns.

16 MRS. SARVEY: I'm not asking you to tell  
17 me what I want to hear. I'm asking you to get to  
18 the truth and solve the problem.

19 PRESIDING COMMITTEE MEMBER GEESMAN: We  
20 will do that.

21 MRS. SARVEY: Thank you.

22 HEARING OFFICER GEFTER: Okay, thank  
23 you.

24 Does the Intervenor have anything else?  
25 You want to do Public Comment now? Okay, you can



1 identify it as Public Comment, then. And then  
2 we're going to move on.

3 INTERVENOR SARVEY: All right.

4 HEARING OFFICER GEFTER: Understand  
5 Mr. Sarvey has now taken off his Intervenor hat  
6 and he's going to give us a couple of comments.

7 MR. SARVEY: Yeah. I attempted to  
8 provide this to the evidentiary record to give the  
9 decision-makers here an opportunity to understand  
10 what the local issues are here, why we feel that  
11 we are not being protected by the Energy  
12 Commission, and this compliance issue is a deeply  
13 important issue to us.

14 The East Altamonte Energy Center was  
15 just approved. We provided 47 notices of  
16 violation on the project. The Energy Commission  
17 knew nothing about this. I have testimony from  
18 one of the Energy Commission staff members. They  
19 weren't aware.

20 Now, we're just trying to make sure that  
21 this compliance issue, that there are procedures  
22 that are put into this decision to make sure that  
23 the conditions of certification of this project  
24 are complied with.

25 What I tried to provide to the record

1 was Lo Solar Partners, segs 8 and 9, owned by the  
2 Applicant, have been out of compliance with their  
3 permitted conditions five out of the last eight  
4 quarters. They also have a project, the Florida  
5 Power and Light Mason Steam Station, and this is  
6 from the Echo web site, has been out of compliance  
7 in 2000.

8 They also have a project called the  
9 Florida Light and Sanford Power Plant. It's been  
10 out of compliance three out of the last eight  
11 quarters. We have a problem with the Applicant  
12 complying with the provisions of the Clean Water  
13 Act in Florida, and I have a Sun-Sentinel article  
14 concerning that.

15 I would like to offer all of these  
16 things into the record as an offer of proof, and  
17 I'll accept them as Public Comment. Thank you.

18 HEARING OFFICER GEFTER: Well, we can  
19 take those documents and we can put them in the  
20 record. They will be part of the docket.

21 INTERVENOR SARVEY: Okay.

22 INTERVENOR BOYD: Blythe is a CEC  
23 project. He mentioned that. One of their  
24 projects was the Blythe Energy Center, which is a  
25 CEC-approved project. See, Blythe 1 was a CEC-

1 licensed project. The question, the comment I  
2 wanted to make is that I am aware of the fact that  
3 in August that plant was supposed to come on line,  
4 but it hasn't come on line yet.

5 So my question is, is there some problem  
6 in the commissioning, with meeting any of the  
7 conditions of certification specifically geared  
8 toward emission controls or anything that are  
9 causing the delay in the -- are there any  
10 basically compliance issues that have created a  
11 delay in the operation of that plant, basically  
12 the commissioning of the plant I guess is what  
13 it's characterized as, since it was originally  
14 dated to go on line in August and here we're in  
15 September and it is still not.

16 HEARING OFFICER GEFTER: Okay. End your  
17 question. Mr. Galati, do you want to answer that  
18 question?

19 INTERVENOR BOYD: Is that irrelevant?

20 APPLICANT COUNSEL GALATI: I want to  
21 talk to my witness to see if he can --

22 HEARING OFFICER GEFTER: Okay.

23 APPLICANT COUNSEL GALATI: -- and by  
24 that, I don't think it's an irrelevant question.

25 INTERVENOR BOYD: Okay, good.

1 HEARING OFFICER GEFTER: Okay.

2 APPLICANT COUNSEL GALATI: I'll talk to  
3 my witness to find out.

4 I'll provide Mr. McCloud to do his best  
5 to answer, if he can, that question.

6 Whereupon,

7 DUANE MCCLOUD

8 Was recalled as a witness herein and, having been  
9 previously sworn, was examined and testified  
10 further as follows:

11 WITNESS MCCLOUD: My answer to the  
12 question is I am not familiar enough with what's  
13 going on with the issues to understand where they  
14 are and if they are compliance issues. I know  
15 there are issues, but I haven't been that involved  
16 in what they are. So anything I might say might  
17 really --

18 APPLICANT COUNSEL GALATI: Would you say  
19 you don't know?

20 WITNESS MCCLOUD: I don't know.

21 HEARING OFFICER GEFTER: Okay. With  
22 that, we are going to close the topic of  
23 Compliance and move on.

24 STAFF COUNSEL HOUCK: Oh, would you like  
25 Staff to enter its exhibits into the record?

1 HEARING OFFICER GEFTER: Oh, I thought  
2 you had already, but if you haven't, go ahead and  
3 do it again, and it doesn't matter if we repeat  
4 it, we'll have it in twice.

5 STAFF COUNSEL HOUCK: Mr. Caswell, the  
6 project manager, is here today sponsoring this  
7 testimony.  
8 Whereupon,

9 JACK CASWELL  
10 Was recalled as a witness herein and, having been  
11 previously sworn, was examined and testified  
12 further as follows:

13 HEARING OFFICER GEFTER: All right.

14 DIRECT EXAMINATION

15 BY STAFF COUNSEL HOUCK:

16 Q Mr. Caswell, are you familiar with  
17 general conditions including compliance and  
18 monitoring and closure plan, section 7 of  
19 Exhibit 51?

20 A I am.

21 Q Do you have any changes to that  
22 testimony?

23 A I do not.

24 STAFF COUNSEL HOUCK: Staff would  
25 request that Exhibit 51, section 7, be entered

1 into evidence.

2 HEARING OFFICER GEFTER: Any objection?

3 APPLICANT COUNSEL GALATI: No objection.

4 INTERVENOR BOYD: We don't object. Bob  
5 had some questions, I think, of Staff.

6 STAFF COUNSEL HOUCK: Do you have  
7 questions for Staff?

8 INTERVENOR SARVEY: I had one.

9 HEARING OFFICER GEFTER: Okay. If you  
10 have no objection, let's receive the exhibits and  
11 then -- Mr. Sarvey, do you have objections to  
12 Staff's exhibits on Compliance?

13 INTERVENOR SARVEY: No objections.

14 HEARING OFFICER GEFTER: All right.

15 STAFF COUNSEL HOUCK: Staff would like  
16 to note Ila Lewis, who will be the compliance  
17 manager of the project if certified, is not  
18 present today, and Mr. Caswell will attempt to  
19 address questions.

20 HEARING OFFICER GEFTER: All right. The  
21 exhibits identified by Ms. Houck related to  
22 Compliance are now received into the record.

23 (Thereupon a portion of Exhibit 51 was  
24 received into evidence.)

25 HEARING OFFICER GEFTER: And Mr. Sarvey

1 may ask questions on that topic.

2 INTERVENOR SARVEY: And I believe that  
3 Mr. Caswell is fully informed and the Committee is  
4 fully informed on my opinion on this subject, and  
5 I don't think there is any reason to take this any  
6 further. I object to this portion of the  
7 proceeding, thank you.

8 INTERVENOR BOYD: I have one question.

9 HEARING OFFICER GEFTER: You have a  
10 question? All right.

11 CROSS-EXAMINATION

12 BY INTERVENOR BOYD:

13 Q Jack, do you know who the compliance  
14 manager is for Blythe?

15 A I do not.

16 Q Okay. Is Staff aware of any compliance  
17 issues that have been reported to the compliance  
18 manager on the Blythe project?

19 A I couldn't answer any questions related  
20 to that Blythe project, nor do I know that --

21 Q It seems like that's the only one  
22 that --

23 A -- that Ila Lewis would be able to do  
24 that either.

25 INTERVENOR BOYD: Okay.

1 HEARING OFFICER GEFTER: All right. Now  
2 we can close the topic of Compliance and we can  
3 move on, and the next topic is Alternatives.

4 APPLICANT COUNSEL GALATI: Dr. Mudry has  
5 previously been sworn. He is the witness  
6 sponsoring Alternatives, and Scott Busa has also  
7 previously been sworn, and Zoran Rausavljevich has  
8 been previously sworn as well.

9 Whereupon,

10 DWIGHT MUDRY, SCOTT BUSA, and

11 ZORAN RAUSAVLJEVICH

12 Were recalled as witnesses herein and, having been  
13 previously sworn, were examined and testified  
14 further as follows:

15 DIRECT EXAMINATION

16 BY APPLICANT COUNSEL GALATI:

17 Q Dr. Mudry, are you familiar with  
18 Exhibit 43, the testimony of yourself, Scott Busa  
19 and Zoran Rausavljevich entitled Alternatives?

20 A Yes, I am.

21 Q Do you have any changes or modifications  
22 to that testimony at this time?

23 A We have no changes.

24 APPLICANT COUNSEL GALATI: Ms. Gefter,  
25 in addition to that exhibit, which is Exhibit 43,



1       this panel is also sponsoring a portion of  
2       Exhibit 1, specifically section 3.10; a portion of  
3       Exhibit 3, specifically response numbers 14  
4       through 22; and a portion of Exhibit 4,  
5       specifically response 267.

6               I would ask that Exhibit 43 and those  
7       previously mentioned exhibits be moved into the  
8       record at this time as evidence.

9               HEARING OFFICER GEFTER: Any objection?

10              STAFF COUNSEL HOUCK: No objection.

11              INTERVENOR SARVEY: No objection.

12              INTERVENOR BOYD: No objection.

13              HEARING OFFICER GEFTER: Exhibit 43 and  
14       other exhibits identified by Mr. Galati related to  
15       Alternatives are received into the record.

16              (Thereupon Exhibit 43 and portions of  
17       Exhibits 1-3 were received into evidence.)

18              HEARING OFFICER GEFTER: Staff?

19              STAFF COUNSEL HOUCK: Yes. Mr. Caswell  
20       is also here to be able to sponsor this testimony.  
21       Whereupon,

22                       JACK CASWELL

23       Was recalled as a witness herein and, having been  
24       previously sworn, was examined and testified  
25       further as follows:

1 INTERVENOR SARVEY: Can I cross-examine  
2 the Applicant first before Staff goes forward?

3 Excuse me, procedural question, point of order?

4 HEARING OFFICER GEFTER: Okay.

5 INTERVENOR SARVEY: Should I cross-  
6 examine Applicant before they testify?

7 HEARING OFFICER GEFTER: You can cross-  
8 examine both of them after they have testified.

9 INTERVENOR SARVEY: Okay, thank you.

10 HEARING OFFICER GEFTER: Okay. Staff?

11 DIRECT EXAMINATION

12 BY STAFF COUNSEL HOUCK:

13 Q Mr. Caswell, does Staff have any changes  
14 to the Alternatives testimony?

15 A They do not.

16 STAFF COUNSEL HOUCK: Staff would like  
17 to enter Exhibit 51, section 6, and Exhibit 53,  
18 the Alternatives section starting at page 18 going  
19 through page 20 into evidence.

20 HEARING OFFICER GEFTER: Any objection?

21 INTERVENOR SARVEY: No objection.

22 INTERVENOR BOYD: No objection.

23 APPLICANT COUNSEL GALATI: No objection.

24 HEARING OFFICER GEFTER: Okay. The  
25 exhibits identified by Ms. Houck related to

1 Alternatives are now received into the record.

2 (Thereupon portions of Exhibits 51 & 53  
3 were received into evidence.)

4 HEARING OFFICER GEFTER: I know  
5 Mr. Sarvey had cross-examination questions.

6 You may proceed.

7 INTERVENOR SARVEY: This is for the  
8 Applicant first, then I'll get to Staff.

9 CROSS-EXAMINATION

10 BY INTERVENOR SARVEY:

11 Q Why do you prefer a manual plume  
12 abatement system over an automatic plume abatement  
13 system?

14 APPLICANT COUNSEL GALATI: I don't think  
15 this is properly in Alternatives, but I think,  
16 Mr. McCloud, if you could answer that question for  
17 Intervenor Sarvey, I believe it deals with the  
18 area of Visual Resources. Would it be okay if I  
19 brought up Mr. McCloud at this time?

20 HEARING OFFICER GEFTER: Yes, it's fine.  
21 Whereupon,

22 DUANE MCCLOUD

23 Was recalled as a witness herein and, having been  
24 previously sworn, was examined and testified  
25 further as follows:

1 THE WITNESS: The primary driver that we  
2 looked at was cost. It's significantly more  
3 expensive. Without going through a detailed  
4 design, we were given numbers on the order of two  
5 million dollars or more for an automated system.

6 Looking at the visual impact analysis,  
7 the plume analysis, it did not appear that that  
8 would gain us anything significantly. As a  
9 result, we proposed, as we previously mentioned in  
10 Visual and agreed with Staff on an alternative  
11 wording that would notify us when a plume-abating  
12 condition existed in order for us to activate the  
13 plume abatement system.

14 BY INTERVENOR SARVEY:

15 Q So what conditions with the manual plume  
16 abatement system trigger? I mean, what conditions  
17 would trigger the manual plume abatement system?  
18 I mean, obviously the automatic plume abatement  
19 system would have certain parameters.

20 A It would be the same. It would be a  
21 meteorological monitoring that would show that  
22 plume-producing conditions existed.

23 Q And is dry cooling feasible for this  
24 project?

25 A I think that depends on the definition

1 of "feasible." In terms of technically feasible,  
2 yes.

3 Q Okay, thank you. In the area of  
4 Alternatives, aren't there newer and more  
5 efficient turbines the project could have used to  
6 lessen impacts on energy resources?

7 A I believe this is an issue that  
8 previously was discussed in Efficiency.

9 APPLICANT COUNSEL GALATI: Mr. Sarvey,  
10 if you could clarify your question, because you  
11 made a statement in there that I think is  
12 objectionable; that is, to conserve energy  
13 resources. What specifically is your question?  
14 Are there more energy-efficient turbines?

15 INTERVENOR SARVEY: Yeah.

16 BY INTERVENOR SARVEY:

17 Q Could this project have used a more  
18 energy-efficient turbine and thereby conserved  
19 energy resources?

20 A I believe us and Staff discussed that  
21 rather extensively in the discussion of  
22 Efficiency. There are gas turbines that have a  
23 slightly better heat rate that is slightly more  
24 efficient than what we proposed here with an F  
25 class machine, yes, and that is discussed in the

1 Efficiency section.

2 Q In your analysis of alternative sites in  
3 the AFC, did you choose any brown field sites to  
4 look at as an alternative?

5 A One of our first siting criteria was to  
6 look around the Tesla substation, because that's  
7 the project as we saw it would be to connect to  
8 the Tesla substation. There were no brown field  
9 sites identified in the area that we considered  
10 local.

11 Q In your analysis of the AFC, it looks  
12 like you pretty much determined that the sites  
13 were fairly equal and that no site really offered  
14 more environmental advantages or disadvantages  
15 than the site you chose; is that correct?

16 APPLICANT COUNSEL GALATI: I would  
17 object to the extent that it mischaracterizes the  
18 AFC, but if you could speak to that issue, I  
19 believe that would be Dr. Mudry.

20 WITNESS MUDRY: Could you restate that  
21 question, please?

22 INTERVENOR SARVEY: Yeah.

23 BY INTERVENOR SARVEY:

24 Q In your analysis in the AFC, you graded  
25 the sites and it looked to me, my opinion was that

1       they were fairly equal as far as environmental  
2       impacts. And would you agree with that, that  
3       that's the reason this site is preferable, because  
4       there really is no other site that you looked at  
5       under Alternatives that was, more or less, less  
6       impact to the environment?

7           A     Well, we looked at a large number of  
8       sites and we went and examined each site  
9       individually for the various potential impacts,  
10      and each site had a slightly different type of  
11      impact. But on the whole, this site was favorable  
12      compared to the other sites.

13           INTERVENOR SARVEY: That's all I have,  
14      thanks.

15           HEARING OFFICER GEFTER: Do you have any  
16      questions for the Staff?

17           INTERVENOR SARVEY: Yes, I do.

18           APPLICANT COUNSEL GALATI: Ms. Gefter,  
19      can I ask one followup question based on the  
20      cross?

21           HEARING OFFICER GEFTER: Yes.

22           APPLICANT COUNSEL GALATI: Thank you.

23      BY APPLICANT COUNSEL GALATI:

24           Q     You answered a question that there were  
25      possibly more favorable heat rates available on

1 different turbines; do you remember that answer?

2 A Yes.

3 Q Are there any down sides to using those  
4 particular turbines?

5 A Yes, and this was discussed in the  
6 Efficiency discussion by Staff. There is one  
7 commercially available machine that has a slightly  
8 better efficiency on the gas turbine end. It's a  
9 very new technology. There are issues related to  
10 financeability of that technology, how proven that  
11 technology is, and the other thing we look at is  
12 life-cycle costs of the plant. So the cost of  
13 maintaining and operating that plant is also  
14 higher.

15 So there are a number of factors that go  
16 into it, not just the straight efficiency of the  
17 gas turbine.

18 APPLICANT COUNSEL GALATI: No further  
19 questions, thanks.

20 HEARING OFFICER GEFTER: Is that a G  
21 class or an H class?

22 THE WITNESS: I'm referring to a G  
23 class.

24 HEARING OFFICER GEFTER: G class, okay.

25 Do you have questions for Staff?



1 INTERVENOR SARVEY: Yeah.

2 CROSS-EXAMINATION

3 BY INTERVENOR SARVEY:

4 Q On page 6-27 of your testimony in the  
5 FSA --

6 HEARING OFFICER GEFTER: That's  
7 Exhibit 51?

8 INTERVENOR SARVEY: Exhibit 51.

9 BY INTERVENOR SARVEY:

10 Q -- you state that the no project  
11 alternative is not referred because the  
12 elimination of older generation and the project  
13 both create a more reliable electrical system.  
14 Have you identified any older generation that can  
15 be phased out by this plant?

16 A Jack Caswell, project manager for Staff.  
17 Under the current conditions, it's almost  
18 impossible to identify a particular plant that may  
19 or may not be on line or continue to operate.  
20 Just due to the fact that the whole intent of this  
21 whole new, it's my understanding that this energy  
22 system is to bring on newer, more efficient plants  
23 and therefore create a competition that would  
24 automatically force plants to either upgrade or  
25 eliminate them from the system at this time or in

1 the future.

2 But we do not have specific data  
3 identifying a plant or plants that this project  
4 would eliminate.

5 Q Have you done assessment to determine if  
6 smaller, more dispersed small combined-cycle  
7 plants would lead to greater reliability since the  
8 generation would be dispersed and would be less  
9 likely to provide major impacts to reliability  
10 than when one large 1160-megawatt plant goes off  
11 line?

12 A Not in this analysis, no.

13 Q In your professional opinion, would  
14 smaller plants provide less voltage drops because  
15 the distances are smaller?

16 A I don't believe I can comment on that.

17 Q Wouldn't load management be easier with  
18 the smaller, more dispersed plants?

19 A Again, I'm not qualified to answer that  
20 question.

21 Q All right. Do you support the  
22 Applicant's position to have a manually controlled  
23 plume abatement system?

24 STAFF COUNSEL HOUCK: I would object.

25 That seems to be a question that is more for

1       either Visual Resource or Air Quality. I would  
2       also note that this was not a contested topic that  
3       was raised at the prehearing conference, and Staff  
4       did not feel that they needed to have Transmission  
5       and Facility Design engineers present to answer  
6       the questions that Mr. Sarvey is asking since  
7       these issues were not raised as being contested  
8       earlier.

9               HEARING OFFICER GEFTER: Your objection  
10       is sustained. Mr. Sarvey did indicate he was  
11       going to cross-examine on Alternatives. I think  
12       we're going way beyond that topic.

13              INTERVENOR SARVEY: Alternatives? A  
14       manual plume abatement system is not an  
15       alternative, is that what you're saying?

16              HEARING OFFICER GEFTER: It's an  
17       alternative technology, but that was not  
18       indicated. So, in other words, Staff does not  
19       have a witness here to answer that question.

20              Perhaps the Applicant can answer that  
21       question.

22              INTERVENOR SARVEY: They've already  
23       answered it. I'll just point out for the record  
24       that there was no answer to any of those  
25       questions, thank you.

1           APPLICANT COUNSEL GALATI:  Actually, if  
2   I could just break in to provide some  
3   clarification.

4           Staff did file new Visual testimony that  
5   allowed the language specifically with regards to  
6   the plume abatement system.  So Staff has opined  
7   and Applicant has opined that that manual system  
8   with sensors is the appropriate way to mitigate  
9   any potential plume impacts.

10          STAFF COUNSEL HOUCK:  I would also add  
11   that Mr. Birdsall, who prepared that testimony,  
12   will be here next week on the 18th, and I believe  
13   he will also be here on Friday.

14          But again, it was my understanding that  
15   we were speaking to the Alternatives section.

16          HEARING OFFICER GEFTER:  Okay, and what  
17   you're referring to is the newly drafted condition  
18   Vis 5, correct?

19          STAFF COUNSEL HOUCK:  Yes, and that  
20   would be in Staff's Exhibit 54.

21          HEARING OFFICER GEFTER:  All right.  So,  
22   Mr. Sarvey, if you want to hold that question  
23   until the appropriate witness is available under  
24   the appropriate topic, you can ask the question  
25   again then.

1 BY INTERVENOR SARVEY:

2 Q As noted in the FSA in your errata on  
3 page 19, you testified, "The Energy Commission  
4 does not have the authority to approve an  
5 alternative or require FPL to move the proposed  
6 project to another location, even if it identifies  
7 an alternative site that meets the project  
8 objectives and avoids or substantially lessens one  
9 or more of the impacts to the site"; is that true?

10 A Yes.

11 Q Are there other sites that you would  
12 have chosen to evaluate that would be less  
13 environmental impacts than the Alternatives  
14 chosen -- Strike that.

15 Why were no sites chosen in San Joaquin  
16 County? Are there no suitable sites in San  
17 Joaquin County?

18 A I don't have the details on why each  
19 site was picked, but I can tell you that Staff has  
20 a justification of the sites that they chose to  
21 review as well as a rebuttal of the Applicant's  
22 proposed alternative sites as well. And all I can  
23 do is reference you to that page in --

24 APPLICANT COUNSEL GALATI: I would  
25 object to this characterization. There were sites

1 looked at in San Joaquin County.

2 INTERVENOR SARVEY: I'm speaking to the  
3 Applicant -- the Staff's testimony, not yours. I  
4 know you did look at one, that is correct.

5 THE WITNESS: Staff did review the  
6 Applicant's alternative sites and submitted the  
7 AFC. They also went beyond that to look at other  
8 sites, but if you're looking at a specific site or  
9 have a question about a particular site, I don't  
10 know what you're looking for here.

11 INTERVENOR SARVEY: Yeah, well, I had a  
12 bunch of questions about that, so I'll drop those  
13 and I'll just go to the general.

14 BY INTERVENOR SARVEY:

15 Q And you did review the Applicant's  
16 alternative sites and your conclusion was?

17 A That there were either equal to or  
18 greater than impacts at the alternative sites.

19 Q It was equal to or greater than, okay.

20 A Yes.

21 Q And of the four sites that you reviewed,  
22 was that the same conclusion you came up with?

23 A Potentially worse or similar impacts.

24 INTERVENOR SARVEY: Thank you, that's  
25 all.

1 HEARING OFFICER GEFTER: Did you have  
2 questions?

3 INTERVENOR BOYD: A few questions.

4 HEARING OFFICER GEFTER: All right. You  
5 had not indicated that you were going to do cross-  
6 examination on Alternatives.

7 INTERVENOR BOYD: They're real simple.

8 HEARING OFFICER GEFTER: All right.

9 CROSS-EXAMINATION

10 BY INTERVENOR BOYD:

11 Q First, the Applicant, did you -- in your  
12 professional opinion, is the no project  
13 alternative environmentally preferred and, if not,  
14 why? And when I mean environmentally preferred, I  
15 mean under CEQA. CEQA identifies all of the  
16 impacts.

17 APPLICANT COUNSEL GALATI: Could we have  
18 a moment?

19 INTERVENOR BOYD: Okay, I'll withdraw  
20 the question.

21 HEARING OFFICER GEFTER: You're  
22 withdrawing the question?

23 INTERVENOR BOYD: Yeah, I'll withdraw  
24 that question.

25 HEARING OFFICER GEFTER: Okay. The

1 question is withdrawn. Do you have any other  
2 questions?

3 INTERVENOR BOYD: Okay.

4 BY INTERVENOR BOYD:

5 Q My only other question is that in the  
6 New Source Review, recently there was a change at  
7 the EPA for New Source Review, which you were  
8 earlier talking about. He had asked you a  
9 question about brown fields, and --

10 HEARING OFFICER GEFTER: Mr. Sarvey  
11 asked a question about brown fields.

12 BY INTERVENOR BOYD:

13 Q -- and if you had considered brown  
14 fields. Is it your -- Do you have an  
15 understanding of the changes to the New Source  
16 Review as it relates to brown field sites? Do you  
17 have any knowledge of that?

18 APPLICANT COUNSEL GALATI: And again, I  
19 would apologize, Mr. Boyd. I don't have a witness  
20 here who can answer the detail. They're air  
21 quality issues, but you can ask that question in  
22 Air Quality of our expert who would know what the  
23 changes to the New Source Review were.

24 INTERVENOR BOYD: Basically, what I'm  
25 trying to figure out, the New Source Review



1 changed my understanding of it as what happened,  
2 is it required --

3 HEARING OFFICER GEFTER: Wait, wait. We  
4 don't -- You're --

5 INTERVENOR BOYD: I'm trying to show  
6 alternatives. The reason for this is I'm trying  
7 to demonstrate as an alternative a brown field,  
8 under the new regulations, wouldn't require the  
9 level of emission mitigation.

10 BY INTERVENOR BOYD:

11 Q And so the question was did you, when  
12 you were considering alternative sites, take into  
13 consideration the fact that under the New Source  
14 Review as revised that there is an advantage  
15 economically for using a brown field site?

16 APPLICANT COUNSEL GALATI: I think we  
17 can provide an answer, but can I clarify the  
18 question?

19 INTERVENOR BOYD: Sure.

20 APPLICANT COUNSEL GALATI: Can I ask  
21 Mr. Mudry if you took into account the effect of  
22 the New Source Review rule anywhere in his  
23 analysis?

24 THE WITNESS: No, we did not.

25 APPLICANT COUNSEL GALATI: Okay.

1 BY INTERVENOR BOYD:

2 Q And that would be the same question that  
3 I would ask Staff, is if they were performing  
4 their alternative analysis, did they take into  
5 consideration the changes in the New Source Review  
6 and how that would affect alternative sites that  
7 were brown fields?

8 A And I would have to defer to Staff's  
9 analysis, and I don't see where that is even  
10 mentioned. So I would have to check with the  
11 author of this section and ask if she did take  
12 that into consideration, so I can't answer that.

13 (Thereupon, the tapes were changed with  
14 no interruption in the proceeding.)

15 INTERVENOR BOYD: That's it.

16 HEARING OFFICER GEFTER: Okay. You can  
17 ask that question of the Air Quality witnesses at  
18 that time.

19 INTERVENOR BOYD: Okay.

20 HEARING OFFICER GEFTER: At this time  
21 the topic of Alternatives is closed, and we have  
22 scheduled at 6:00 o'clock the topic of Worker  
23 Safety and Fire Protection.

24 Before we take a recess, we do need to  
25 go back to Power Plant Efficiency and Gas Supply,

1 Exhibit 120, and we now have distributed copies of  
2 that document to the parties, and this was one of  
3 Staff's proposed exhibits. I want to now ask  
4 Staff if you want to introduce this exhibit under  
5 the topic of Power Plant Efficiency?

6 STAFF COUNSEL HOUCK: Yes. Staff would  
7 request to enter Exhibit 120 into evidence.

8 APPLICANT COUNSEL GALATI: Ms. Hearing  
9 Officer, we have reviewed Exhibit 120 and have no  
10 objection.

11 HEARING OFFICER GEFTER: All right.  
12 Intervenors, you've seen Exhibit 120. Any  
13 objection?

14 INTERVENOR SARVEY: It seems to be the  
15 same material that's already covered, but I have  
16 no objection.

17 INTERVENOR BOYD: No objection.

18 HEARING OFFICER GEFTER: Okay. At this  
19 point, then, Exhibit 120 is now received into the  
20 record.

21 (Thereupon Exhibit 120 was received into  
22 evidence.)

23 HEARING OFFICER GEFTER: And the topic  
24 of Power Plant Efficiency is closed.

25 Also, I have a member of the public who

1 would like to address us and make public comment,  
2 so let's take your comment, and this is  
3 Mrs. Sundberg. And then after we receive your  
4 comment we are going to recess.

5 Please come up and please take a seat  
6 and spell your name for us.

7 MRS. SUNDBERG: Irene Sundberg,  
8 S-u-n-d-b-e-r-g, I-r-e-n-e. I'm a resident of  
9 Tracy.

10 HEARING OFFICER GEFTER: Thank you.

11 MRS. SUNDBERG: I just heard that you  
12 were just discussing brown fields and a new  
13 source, and that wasn't discussed within the  
14 perimeters already, and so I'm wanting to know why  
15 you can't take the time to investigate this  
16 further, since this plant is not already  
17 prelicensed. It's in a prelicensing stage right  
18 now.

19 So I would like you to look into that.

20 HEARING OFFICER GEFTER: All right.  
21 When the expert witnesses on Air Quality are here  
22 to testify, and that will be on September 18th,  
23 next Thursday, here in Tracy, we can ask those  
24 questions of those witnesses.

25 MRS. SUNDBERG: Okay.

1 HEARING OFFICER GEFTER: Because they  
2 would be more familiar with that. As Mr. Boyd has  
3 characterized this as a new rule, we're not  
4 familiar with it, we'll ask our Air Quality  
5 witnesses to testify about that.

6 MRS. SUNDBERG: Okay, and you will have  
7 those answers available to us then, on the 18th?

8 HEARING OFFICER GEFTER: Well, they will  
9 be testifying, and you can attend the hearing at  
10 that time. They will be here.

11 MRS. SUNDBERG: Okay, and they will be  
12 available to answer these questions?

13 INTERVENOR BOYD: Possibly (laughing).  
14 Sorry.

15 HEARING OFFICER GEFTER: Okay. Let's  
16 strike Mr. Boyd's comments.

17 INTERVENOR BOYD: Sorry.

18 HEARING OFFICER GEFTER: Okay.

19 PRESIDING COMMITTEE MEMBER GEESMAN: I  
20 should say that my familiarity with the general  
21 New Source Review rule is fairly generalized, but  
22 I would emphasize that it is a federal rule, it is  
23 not a state rule. This facility is going to have  
24 to meet both state and federal Clean Air Act  
25 requirements.

1           I would also say that my understanding  
2       is that there is an effort in the state  
3       legislature to adopt legislation that would  
4       effectively reverse the federal proposal. I'm not  
5       certain that I would share the way Mr. Boyd  
6       characterized the impact of the federal proposal  
7       on alternative sites quite the way he did, but we  
8       will have the Air Quality experts here on the  
9       18th, and we can pose the question to them.

10           MRS. SUNDBERG: I most certainly will do  
11       that at that time, thank you.

12           HEARING OFFICER GEFTER: Okay. We are  
13       going to recess. Off the record.

14           (Whereupon, at 4:35 p.m., the hearing  
15       was adjourned, to reconvene at 6:00  
16       p.m., this same day.)

17                       --o0o--

## 1 EVENING SESSION

2 6:00 p.m.

3 HEARING OFFICER GEFTER: Okay. The  
4 hearing is resumed, and we are going to take  
5 testimony on Fire Protection and Worker Safety.

6 I will ask the Applicant, Mr. Galati, to  
7 begin.

8 APPLICANT COUNSEL GALATI: Thank you,  
9 Ms. Gefter. At this time I'm presenting a panel  
10 on Worker Safety and Fire Protection, and that is  
11 Lida Moussavian and Scott Busa, who have been  
12 previously sworn before today.

13 Whereupon,

14 LIDA MOUSSAVIAN and SCOTT BUSA  
15 Were recalled as witnesses herein and, having been  
16 previously sworn, were examined and testified  
17 further as follows:

18 APPLICANT COUNSEL GALATI: So I will ask  
19 Scott Busa --

## 20 DIRECT EXAMINATION

21 BY APPLICANT COUNSEL GALATI:

22 Q -- are you familiar with Exhibit 44,  
23 which is your testimony of Lida Moussavian and  
24 Scott Busa entitled Worker Safety and Fire  
25 Protection that was filed on August 29th, 2003?

1           A     Yes, I am.

2           Q     Do you have any changes or modifications  
3 to that testimony at this time?

4           A     Yes, I do. I did want to get into the  
5 record some things that have been happening with  
6 the project in dealing with fire protection, in  
7 particular. Early on in the process of the  
8 project we did approach Alameda County, knowing  
9 that they were the jurisdictional agency. We did  
10 speak with the fire department and the planning  
11 and zoning board, and as an offer of good will of  
12 moving into Alameda County here, we did offer  
13 \$500,000 to the fire chief and stipulated that it  
14 be used for fire protection, whatever he would  
15 like in the Eastern Alameda County area.

16                 Since the site visit that we had in July  
17 when Hearing Officer Gefter kind of directed us to  
18 see if there was anything we could do to answer  
19 some of the public comment on fire protection,  
20 once again we've gone back to Alameda County and  
21 looked at the verbal agreement that we had with  
22 them, and tried to work some wording changes with  
23 that that might allow Alameda County to look at  
24 the money that we'd be giving them and see if  
25 there was any way that they might be able to share



1       that with other jurisdictions in any way, shape or  
2       form.

3               So I just wanted to add that to my  
4       testimony, that we have approached Alameda County  
5       and that we have encouraged them to talk with  
6       other jurisdictions on some of the issues that  
7       have come up, sort of in a bigger picture here  
8       than just the power plant itself.

9               HEARING OFFICER GEFTER:   And have you  
10      had any response or any information?

11              THE WITNESS:   Actually, there is nothing  
12      formal yet.   I'm hoping to hear maybe some of that  
13      tonight.

14              HEARING OFFICER GEFTER:   Okay, good.

15      BY APPLICANT COUNSEL GALATI:

16              Q       So, Mr. Busa, to summarize, the only  
17      changes to your testimony would be those updating  
18      the Committee on the \$500,000?

19              A       Yes, that's correct.

20              APPLICANT COUNSEL GALATI:   With that,  
21      Ms. Gefter, Worker Safety and Fire Protection,  
22      Exhibit 44, also sponsors a portion of Exhibit 1,  
23      which is AFC, section 5.14, and a portion of  
24      Exhibit 3, specifically the responses to the first  
25      set of data requests, response number 205.

1 I would ask that those be moved into  
2 evidence and Mr. Busa is available for any  
3 questions that the Committee or others may have.

4 HEARING OFFICER GEFTER: Any objection  
5 to those exhibits being received?

6 STAFF COUNSEL HOUCK: No objection.

7 HEARING OFFICER GEFTER: Intervenors?

8 INTERVENOR SARVEY: No objection.

9 INTERVENOR BOYD: No objection.

10 HEARING OFFICER GEFTER: Okay.  
11 Exhibit 44 and the other exhibits referred to by  
12 Mr. Galati related to Worker Safety and Fire  
13 Protection are now received into the record.

14 (Thereupon Exhibit 44 and portions of  
15 Exhibits 1 & 3 were received into evidence.)

16 HEARING OFFICER GEFTER: Does anyone  
17 have any cross-examination of Mr. Busa? Staff?

18 STAFF COUNSEL HOUCK: Staff does not  
19 have any questions for Mr. Busa.

20 HEARING OFFICER GEFTER: Mr. Sarvey?

21 CROSS-EXAMINATION

22 BY INTERVENOR SARVEY:

23 Q You state on page three of your  
24 testimony that FPL has agreed to give Alameda  
25 County \$500,000 in funding for enhanced emergency

1 services. Can you provide a document to the  
2 Committee to show them that this is true?

3 A There has been no approved document yet.  
4 These have been verbal communications and some  
5 draft documents that have been exchanged with the  
6 county.

7 Q Throughout the proceedings, FPL  
8 representatives were going to provide a bulldozer  
9 to Alameda County Fire; is this latest change in  
10 your statement a reflection of the East Altamonte  
11 Energy Center decision?

12 A No. The intended use, when we  
13 originally talked to Alameda County, was for a  
14 bulldozer. Again, we had only stipulated that it  
15 be used for fire protection in the area, and we've  
16 kind of gone back and said that should be  
17 available for other jurisdictions if such  
18 agreement could be reached.

19 Q Calpine gave Alameda County three  
20 million dollars in fire funding. Why do you think  
21 FPL's impact will be any less?

22 APPLICANT COUNSEL GALATI: I would  
23 object to the extent. I'm not sure that that is a  
24 proper characterization of the Calpine agreement.  
25 If I hadn't seen the Calpine agreement or read the

1 transcript, I wouldn't know that there is three  
2 million dollars in funding. But assuming that's  
3 the case, I'll let him answer the question.

4 THE WITNESS: Really, this isn't being  
5 done to reduce or to mitigate any impacts, this is  
6 being done more as a good will gesture to the  
7 county.

8 BY INTERVENOR SARVEY:

9 Q In your testimony you state that the  
10 relationship between Alameda County and Tracy Fire  
11 is extremely strained, and you attribute that  
12 conclusion to statements made in the East  
13 Altamonte Energy proceeding; is that correct?

14 A I did read the East Altamonte  
15 proceedings and I've had discussions with the  
16 county, so yes, based on previous conversations  
17 and the East Altamonte hearings.

18 Q Do you think Tracy Fire is upset that  
19 two energy plants have been sited, one in their  
20 service area and one adjacent to their service  
21 area, and no mitigation to date has been provided,  
22 even though one plant is already operating?

23 APPLICANT COUNSEL GALATI: I would  
24 object to that question asking Mr. Busa to guess  
25 what the City of Tracy feels like.

1 HEARING OFFICER GEFTER: Your objection  
2 is sustained.

3 BY INTERVENOR SARVEY:

4 Q Is your opinion, and you state this in  
5 your testimony, the rift is growing larger between  
6 the two departments because of Tesla?

7 APPLICANT COUNSEL GALATI: I object to  
8 that also being in the testimony. If you could  
9 point that out to Mr. Busa, he could respond to  
10 specifics.

11 BY INTERVENOR SARVEY:

12 Q Page 2 of your testimony, Exhibit 44,  
13 under Opinions and Conclusions. It would be the  
14 second paragraph. It reads, "The relationship  
15 between Alameda County and the City of Tracy is  
16 extremely strained; in fact, statements made at  
17 the East Altamonte proceeding indicate that there  
18 is some question whether the two fire departments  
19 will continue to render mutual aid under the  
20 existing mutual aid agreement between the two  
21 agencies."

22 A That was my impression from the  
23 proceedings at East Altamonte, that there was some  
24 question as to the mutual aid agreement. I  
25 believe that even came up in our prehearing

1 conference when we were discussing, either under  
2 Public Comment or some comment by Staff or  
3 Intervenors.

4 Q Can you comment on any fires or  
5 explosions at FPL facilities in the last two  
6 years?

7 A I wouldn't have any detailed knowledge  
8 of fires or explosions.

9 Q Drawing your attention to Exhibit 72(a),  
10 could you read that headline there for me, please.

11 APPLICANT COUNSEL GALATI: Again, I  
12 would object to this being an evidentiary exhibit.  
13 I know it's not being offered into evidence at  
14 this time, but I would object to it as hearsay.

15 HEARING OFFICER GEFTER: Okay. Which  
16 exhibit are you referring to, Mr. Sarvey?

17 INTERVENOR SARVEY: This is 72(a), the  
18 Miami Herald: "FPL workers put out transformer  
19 fire in Dania Beach."

20 HEARING OFFICER GEFTER: Okay. So,  
21 Mr. Galati, you are objecting to this on what  
22 ground?

23 APPLICANT COUNSEL GALATI: I'm objecting  
24 to it as hearsay. I'm also objecting to it as  
25 irrelevant to the proceedings.

1 HEARING OFFICER GEFTER: I would have to  
2 say that your objection is sustained. This is  
3 hearsay and I'm not sure of the relevance either.

4 Mr. Sarvey?

5 INTERVENOR SARVEY: The relevance is I'm  
6 just pointing out that the Applicant has had fires  
7 at his power plant, and perhaps that is an issue  
8 the Committee ought to take note of and be  
9 concerned about.

10 HEARING OFFICER GEFTER: Well, the  
11 objection is sustained, so this document,  
12 Exhibit 70(a), are you offering this into the  
13 record or did you just have it identified?

14 INTERVENOR SARVEY: I'm offering it into  
15 the record.

16 HEARING OFFICER GEFTER: Okay. Well,  
17 the objection is being sustained and I agree with  
18 Mr. Galati that it's hearsay, and I'm not  
19 persuaded that this is a relevant document to this  
20 proceeding.

21 INTERVENOR SARVEY: Your statement is  
22 that --

23 HEARING OFFICER GEFTER: So it will not  
24 be --

25 INTERVENOR SARVEY: -- a fire in an FPL

1 facility is not relevant to this proceeding; is  
2 that correct?

3 HEARING OFFICER GEFTER: I'm saying that  
4 this document is not relevant to the proceeding  
5 and it will not be an exhibit. You can offer it  
6 in as Public Comment.

7 INTERVENOR SARVEY: Okay, I will, thank  
8 you.

9 HEARING OFFICER GEFTER: Okay.

10 BY INTERVENOR SARVEY:

11 Q Are you aware that this project is  
12 adjacent to an earthquake fault?

13 A Yes, that's been studied in our analysis  
14 of the project.

15 Q Are there any additional measures that  
16 you have implemented in Worker Safety and Fire  
17 Protection to deal with the issue?

18 APPLICANT COUNSEL GALATI: I would  
19 object to the extent that those areas are properly  
20 covered under Other Topic Areas, specifically  
21 Geology and Paleontology and Facility Design, but  
22 to the extent that Mr. Busa can answer the  
23 question, he can certainly try.

24 THE WITNESS: I would have to defer to  
25 the other subject experts.



1 INTERVENOR SARVEY: Okay. Let's just  
2 let the record reflect there was no answer.

3 That's all I have. Thank you.

4 HEARING OFFICER GEFTER: Okay. Staff --

5 APPLICANT COUNSEL GALATI: Ms. Gefter,  
6 before we move to Staff, I did neglect to bring  
7 out a point in the testimony that I apologize for.  
8 Can I ask another question of Mr. Busa?

9 HEARING OFFICER GEFTER: Yes.

10 REDIRECT EXAMINATION

11 BY APPLICANT COUNSEL GALATI:

12 Q Mr. Busa, do you have any knowledge  
13 about whether or not there will be a defibrillator  
14 on site?

15 A Yes, I understand that to be standard  
16 practice, that there will be defibrillators and  
17 our personnel will be trained to use that around  
18 the clock.

19 Q And is your testimony here today a  
20 commitment to that effect?

21 A Yes, we're willing to take that as a  
22 condition.

23 APPLICANT COUNSEL GALATI: Thank you.

24 HEARING OFFICER GEFTER: Okay, and who  
25 is drafting that condition?

1           STAFF COUNSEL HOUCK: Staff would be  
2 willing to draft that condition if the Applicant  
3 has no objection.

4           APPLICANT COUNSEL GALATI: No objection.

5           HEARING OFFICER GEFTER: Okay. All  
6 right, so --

7           DR. GREENBERG: Hearing Officer Gefter,  
8 I have words to that effect right now, if you'd  
9 like to --

10          HEARING OFFICER GEFTER: Okay. Well,  
11 I'd like to see a -- Do you have copies of it or  
12 do you have it just in a draft form?

13          STAFF COUNSEL HOUCK: We can submit that  
14 in writing prior to the end of hearing.

15          HEARING OFFICER GEFTER: Thank you.  
16 Okay, and that would be Fire Protection  
17 condition what?

18          DR. GREENBERG: Three.

19          HEARING OFFICER GEFTER: Okay. Staff,  
20 would you like to put on your exhibits and your  
21 testimony?

22          STAFF COUNSEL HOUCK: Yes. Staff does  
23 have a panel of witnesses.

24          Dr. Greenberg was sworn in earlier  
25 today.

1 Whereupon,

2 ALVIN GREENBERG

3 Was recalled as a witness herein and, having been  
4 previously sworn, was examined and testified  
5 further as follows:

6 STAFF COUNSEL HOUCK: Would the  
7 Committee like to swear in all of the witnesses  
8 first before we proceed?

9 HEARING OFFICER GEFTER: Yes, please go  
10 ahead.

11 THE REPORTER: Please stand and raise  
12 your right hands.

13 Whereupon,

14 BILL MCCAMMON, RICHARD BROWN,

15 RANDY BRADLEY, and LARRY FRAGOSA

16 Were recalled as a witness herein and, having been  
17 previously sworn, were examined and testified  
18 further as follows:

19 THE REPORTER: The witnesses are sworn.

20 HEARING OFFICER GEFTER: Thank you.

21 STAFF COUNSEL HOUCK: Just for  
22 clarification, there were four gentleman just  
23 sworn in. The police chief for the City of  
24 Tracy --

25 THE WITNESS: Fire.

1           STAFF COUNSEL HOUCK: Fire chief, I  
2 apologize.

3           THE WITNESS: Assistant chief.

4           STAFF COUNSEL HOUCK: Assistant fire  
5 chief?

6           THE WITNESS: Assistant fire chief, fire  
7 division chief.

8           STAFF COUNSEL HOUCK: Okay, fire  
9 division chief, who was not listed as part of  
10 Staff's panel, and I did not have information that  
11 he was going to be testifying tonight. And Staff  
12 is sponsoring the testimony of Chief McCammon,  
13 Assistant Chief Brown, and Chief Bradley.

14          HEARING OFFICER GEFTER: Okay, and Chief  
15 Fragosa for the City of Tracy is not part of your  
16 panel, but Intervenor Sarvey and Boyd have  
17 sponsored him.

18          STAFF COUNSEL HOUCK: Okay. I would  
19 also ask for a stipulation from parties as to  
20 Dr. Greenberg's qualifications, as they are in the  
21 FSA and he has testified on several other topics.

22          APPLICANT COUNSEL GALATI: No objection.

23          INTERVENOR BOYD: I don't understand.

24          HEARING OFFICER GEFTER: As to  
25 Dr. Greenberg's qualifications, do you stipulate

1 to Dr. Greenberg's qualifications? He has already  
2 submitted his resume as part of the FSA.

3 INTERVENOR BOYD: I don't have any  
4 problem with his qualifications.

5 HEARING OFFICER GEFTER: Okay, fine.

6 WITNESS GREENBERG: Thank you.

7 (Laughter.)

8 INTERVENOR BOYD: I don't know about  
9 Bob, though, if he has any problem with that,  
10 Dr. Greenberg's qualifications to be a witness?

11 INTERVENOR SARVEY: No, just an expert.

12 HEARING OFFICER GEFTER: Dr. Greenberg,  
13 you have passed the test.

14 (Laughter.)

15 STAFF COUNSEL HOUCK: And we would be  
16 asking Dr. Greenberg to sponsor Exhibits 51, which  
17 is section 4.14 in the final staff assessment;  
18 Exhibit 52, sections 214, and the first addendum  
19 to the staff assessment and Exhibit 53, pages 16  
20 through 18, which is the second addendum to the  
21 staff assessment.

22 DIRECT EXAMINATION

23 BY STAFF COUNSEL HOUCK:

24 Q Dr. Greenberg, did you prepare the  
25 testimony that is outlined in Exhibits 51, 52 and

1 53 that were just referred to?

2 A Yes, I did.

3 Q And do you have any changes to your  
4 written testimony?

5 A No, I do not.

6 Q And do the opinions contained in your  
7 testimony represent your best professional  
8 judgment?

9 A Yes.

10 Q And do you believe that the proposed  
11 project will be in compliance with all LORS?

12 A Yes, I do.

13 Q And LORS meaning laws, ordinances,  
14 regulations and standards?

15 A Yes.

16 Q And is it your professional opinion that  
17 the project does not pose any significant adverse  
18 impacts to the environment?

19 A That is correct.

20 Q Can you briefly summarize your  
21 testimony?

22 A Yes. My testimony, of course, stands up  
23 on its own, as does the addendum, which lists  
24 certain response times and answers to a couple of  
25 questions.

1           There are just a few points that I would  
2     like to make and emphasize. First of all, the  
3     proposed power plant is located within the  
4     jurisdiction of the Alameda County Fire Department  
5     and, as such, it is the Alameda County Fire  
6     Department that has the legal responsibility as a  
7     first responder for fire emergencies, emergency  
8     medical services, and for haz mat emergencies at  
9     the site, at the power plant site.

10           Second of all, the Alameda County Fire  
11    Department is adequately equipped and prepared to  
12    respond to any of those emergencies within  
13    reasonable time frames, some of which are much  
14    shorter than the Commission has certified for  
15    power plants located in other areas of the state.

16           The third point I'd like to make that an  
17    impact has to be found before mitigation would be  
18    required or suggested by Staff, and an impact is  
19    not just a function of what the consequences would  
20    be should an accident occur, but rather, a  
21    function of the consequences times the probability  
22    that an impact would occur.

23           Staff has thoroughly reviewed and  
24    evaluated the need for emergency medical services,  
25    hazardous materials spill response, and fire

1 response at natural gas-fired power plants  
2 certified by the California Energy Commission  
3 located in the State of California.

4 We have talked with applicants, we have  
5 talked with power plant owners, we have spoken  
6 with fire departments, and we have searched the  
7 scientific literature, such as the NFPA, National  
8 Fire Protection Association, as well as searched  
9 databases from federal OSHA and Cal-OSHA and  
10 spoken on the phone with representatives of those  
11 organizations.

12 While it is, of course, necessary to  
13 have adequate emergency response capability, I am  
14 pleased to be able to state the record shows that  
15 this response is not often needed; in fact, it's  
16 rarely needed and when it is needed, for example,  
17 in fire response, it's often as a backup or a mop-  
18 up operation.

19 Yes, there have been on occasion fires  
20 at natural gas-fired power plants in California.  
21 They occur in areas that are covered by automatic  
22 fire suppression systems, which are mandated by  
23 all the codes and all the regulations, all the  
24 LORS that we have cited.

25 One case in particular, there was a fire



1 at a turbine in California at a facility in the  
2 month of March. The automatic fire suppression  
3 system kicked on, put out the fire. The fire  
4 department arrived within five minutes. The fire  
5 had been out already for two minutes.

6 There is very little to burn at a power  
7 plant that is not covered by an automatic fire  
8 suppression system. Now, I'm not talking about a  
9 switchyard, and I'm not talking about other  
10 substations. I'm talking about the power plant  
11 itself. So there's actually very little to burn  
12 that is not covered by an automatic system.

13 When it comes to emergency response for  
14 medical services, we have found that more often  
15 than not, the emergency response has to do with a  
16 nonoccupational injury. That's the statistics  
17 that we've gotten from looking at the databases  
18 and talking with power plant owners.

19 One of the responses is to heart  
20 attacks, which, again, have not occurred in an  
21 occupational setting, but have occurred more  
22 often, and there have just been a few instances  
23 but they have occurred, to visitors in the parking  
24 lot of power plants.

25 The fact that the Florida Power and

1 Light, the Applicant has now pledged and is  
2 willing to agree to a condition of certification  
3 to have on site an automatic defibrillator would  
4 create a situation now where the response would be  
5 faster than any off-site response, whether it be  
6 an EMT III from Alameda County or an EMT I under  
7 mutual aid from the California Department of  
8 Forestry fire station, or from the Tracy Fire  
9 Department, which would only be, again, an EMT I.

10 So that in itself would serve as  
11 mitigation for a very time-important life-  
12 threatening situation that could occur in any  
13 industrial environment. Indeed, the California  
14 Energy Commission building itself has these  
15 automatic defibrillators. They're found at  
16 airports and on airplanes as well.

17 To summarize, Staff reviewed and  
18 evaluated fire suppression methods proposed by the  
19 Applicant, found that they met or exceeded NFPA  
20 guidelines, all of the standards and laws in  
21 building codes and the uniform fire code and the  
22 California fire code, and has determined that the  
23 response times are more than adequate, that there  
24 is mutual aid available to Alameda County Fire  
25 Department should they request it.

1           Mutual aid could come from either  
2       California Department of Forestry Fire Department  
3       or from Tracy Fire Department, both of which are  
4       located in the same building on Schulte Road, and  
5       that, therefore, Staff would not find that this  
6       project posed a significant risk; in fact, we  
7       found the opposite, that it posed an insignificant  
8       risk or an insignificant impact on fire protection  
9       services.

10           Q     Could you say a little bit more about  
11       the mutual aid agreement that would exist between  
12       Alameda County and the CDF and the Tracy Fire  
13       Department?

14           A     You know, that's an excellent topic for  
15       Chief McCammon to address. I would certainly be  
16       happy to discuss it generally, but here is a man  
17       that can discuss it more specifically.

18           STAFF COUNSEL HOUCK: Staff would ask  
19       that they be able to introduce the rest of the  
20       members of the panel and also enter Exhibit 68,  
21       and that way the panel can address the questions  
22       as appropriate, if it's all right with the  
23       Committee.

24           HEARING OFFICER GEFTER: Yes.

25           STAFF COUNSEL HOUCK: All right, thank

1       you.

2       BY STAFF COUNSEL HOUCK:

3           Q     The second member of the panel sitting  
4       next to Dr. Greenberg, would you please state your  
5       name for the record.

6           A     My name is Bill McCammon.

7           Q     And can you state your education and  
8       experience in the area of Fire Protection and  
9       Worker Safety.

10          A     Okay. I'm the fire chief of the Alameda  
11       County Fire Department. I have 25 years'  
12       experience in the fire service, and I've been fire  
13       chief of the Alameda County Fire Department since  
14       its inception in 1993, which has been ten years.

15          Q     Staff is requesting to submit Exhibit 68  
16       into the record. Exhibit 68 is entitled Alameda  
17       County Fire Department's Comments on the Revised  
18       PMPD for the East Altamonte Energy Center. Are  
19       you familiar with that document?

20          A     Yes, I am.

21          Q     Was that document prepared by yourself  
22       or at your direction?

23          A     It was prepared by myself, yes.

24          Q     And do you have any changes or additions  
25       to the information in that document?

1 A No.

2 Q Could you briefly summarize the comments  
3 that you submitted in the East Altamonte case?

4 A Okay. Well, generally the reason that  
5 this document was submitted is that there was some  
6 question that came up or some action by the  
7 Commission in terms of dealing with jurisdictional  
8 issues in the eastern part of Alameda County. And  
9 we wanted to be very clear with the Commission who  
10 had jurisdictional responsibility for those areas  
11 in Alameda County, and then provided some  
12 additional information about responses to  
13 different types of incidents that would occur in  
14 the eastern part of Alameda County.

15 Q Thank you. Have you reviewed the  
16 document submitted by the Energy Commission as  
17 testimony in this case?

18 A Yes.

19 Q And do you concur with the conclusions  
20 reached in those documents?

21 A Yes, we do.

22 Q Thank you. Staff would now like to  
23 introduce the third member of the panel. Would  
24 you please state your name for the record.

25 A That would be Richard Brown.

1           Q     Okay, and could you please state your  
2     experience in the area of Worker Safety and Fire  
3     Protection.

4           A     I've been with the Alameda County Fire  
5     Department for 28 years, 24 years of experience in  
6     the haz mat area. I'm a hazardous materials  
7     specialist and a certified chief officer of the  
8     State of California.

9           Q     And are you familiar with the Staff's  
10    testimony in this case that is in the final staff  
11    assessment?

12          A     Partially.

13          Q     And do you concur with the conclusions,  
14    to the best of your knowledge?

15          A     To the best of my knowledge, yes.

16          Q     Okay. And it's my understanding that  
17    you're here to address any questions or concerns  
18    raised by the Committee or other parties; is that  
19    correct?

20          A     That's correct.

21          Q     Okay, thank you.

22                     And the fourth member of the panel,  
23    would you please state your name for the record.

24          A     Yes. My name is Randy Bradley.

25          Q     And could you please state your

1 qualifications or experience in the area of Worker  
2 Safety and Fire Protection.

3 A I have 23 years of experience in the  
4 fire service. I've been a chief officer for ten  
5 years, certified hazardous materials specialist.  
6 I have a master's degree in planning and haz  
7 mat -- or a certified chief officer. I've been  
8 the fire chief at Lawrence Livermore for the past  
9 three years.

10 Q And are you familiar with the testimony  
11 submitted by Staff in this case?

12 A Yes.

13 Q Have you had discussions with Staff  
14 regarding the issues that have been raised?

15 A Yes.

16 Q And do you concur with the conclusions  
17 Staff has reached in this case?

18 A Yes, as to what I know about it.

19 Q Thank you.

20 Chief McCammon, did you want to  
21 summarize any additional information other than  
22 the summary you provided regarding Exhibit 68?

23 A Well, I just wanted to make a couple of  
24 general comments for the Commission about our fire  
25 department so they can understand kind of the

1 breadth of service that we provide.

2 The Alameda County Fire Department is  
3 responsible for providing service basically to the  
4 unincorporated areas of Alameda County. We also  
5 have contracts for service with the City of San  
6 Leandro to provide fire protection, the City of  
7 Dublin, and the Lawrence Berkeley National  
8 Laboratory.

9 The area we cover is approximately 460  
10 square miles. We have about 270 sworn members of  
11 the department, and we provide a full range of  
12 service, from wildland firefighting in the eastern  
13 part of Alameda County to structural firefighting  
14 and fire protection in heavily industrialized  
15 areas over in the western part of Alameda County.

16 And I just wanted to make a comment  
17 about the jurisdictional issues, because it came  
18 up even earlier this evening in some testimony,  
19 that somehow there is a perception that the Tracy  
20 Fire Department has some jurisdictional  
21 responsibility to respond to these power plants,  
22 both East Altamonte and the Florida Power.

23 They have no jurisdictional authority or  
24 responsibility to respond to those plants. The  
25 only way they would ever get there is if the



1 Alameda County Fire Department contacted them and  
2 made a request for assistance, either through an  
3 automatic aid agreement or a mutual aid agreement  
4 to provide service.

5 Having said that, there was some tension  
6 earlier on in the East Altamonte hearings  
7 regarding the relationship between the two fire  
8 departments. And, quite frankly, most of that was  
9 brought on by others, and not the two fire  
10 departments themselves.

11 Since that time, Chief Fragosa and  
12 myself have had several meetings and I think we've  
13 worked out an agreement where we will be able to  
14 receive assistance through automatic aid of the  
15 Tracy Fire Department. And some of the funds that  
16 Florida Power has committed to this project, we're  
17 going to purchase some equipment for the Tracy  
18 Fire Department so we can augment their response  
19 to the Florida Power Plant.

20 So I would characterize the relationship  
21 between our two fire departments as very good  
22 today, and I would offer Chief Fragosa maybe to  
23 make some comments about that as well. And we're  
24 here available to answer any questions that you  
25 might have.

1           Q     We would like to hear about that  
2     proposal, and if you could give us a little more  
3     information or if Chief Fragosa could do that as  
4     well and we could Chief Fragosa sworn as well.

5           A     Okay.

6           HEARING OFFICER GEFTER:   And why don't  
7     we -- Let me have Chief Fragosa sworn as a  
8     witness, and at this point Mr. Sarvey and Mr. Boyd  
9     are officially sponsoring Chief Fragosa, but we  
10    are also calling you as our witness as well,  
11    because we want to be informed.

12           So if you don't mind standing and being  
13    sworn --

14           APPLICANT COUNSEL GALATI:   Excuse me,  
15    Ms. Hearing Officer, he was sworn.

16           HEARING OFFICER GEFTER:   Oh, you were  
17    already actually sworn in the very beginning?  
18    Okay, very good.

19           Okay, so who wants to go first and tell  
20    us about this plant?

21           WITNESS MCCAMMON:   I don't mind, if you  
22    want me to do this.

23           HEARING OFFICER GEFTER:   Okay, and then  
24    we'll have Chief Fragosa back you up on that.

25           THE WITNESS:   Okay.   We have a

1       longstanding relationship with the Tracy Fire  
2       Department. We both respond into the eastern  
3       parts of Alameda County and we respond into San  
4       Joaquin County as well, to the wildland areas up  
5       on the mountains up there.

6               One of the things we looked at was  
7       something that would provide mutual benefit to  
8       both departments. You heard the comment about the  
9       bulldozer that we had requested through Florida  
10      Power. Ours is fairly old now and needs to be  
11      replaced, and that is used very extensively in the  
12      eastern parts of Alameda and the western parts of  
13      San Joaquin County.

14             In conjunction with that, we believe  
15      that having a water tenderer available to that  
16      part of the county and to respond to this plant,  
17      if there was some sort of a need for a static  
18      water supply that it could bring, it would benefit  
19      both organizations. And the Tracy Fire Department  
20      agrees with that, and so we're moving forward now,  
21      the Alameda County Fire Department, with the  
22      Florida Power Company to make sure that that can  
23      happen, so that they would receive a water  
24      tenderer and then we would finish off with the  
25      dozer and transport that we had originally

1 requested.

2 And in exchange for that, they would  
3 provide automatic aid to the eastern parts of  
4 Alameda County.

5 HEARING OFFICER GEFTER: Okay.

6 Chief Fragosa, would you like to comment  
7 on this?

8 WITNESS FRAGOSA: Yes. Just basically,  
9 just to concur with comments made by Chief  
10 McCammon, that they're all statements of fact.

11 HEARING OFFICER GEFTER: And so this is  
12 a -- Describe the equipment, a water something?

13 THE WITNESS: Tenderer.

14 HEARING OFFICER GEFTER: Tenderer?

15 WITNESS MCCAMMON: It's a water  
16 tenderer. It's a truck that holds 3,000 gallons  
17 of water. When we fight wildland fires in San  
18 Joaquin and Alameda County, one of the  
19 difficulties we have is getting water up to our  
20 engines that are up in the hills, so that will be  
21 used to transport water.

22 And then Tracy would obviously use it  
23 for their remote areas where they have houses but  
24 they don't have water, built-in water systems for  
25 them. So they could use it for structural

1        firefighting as well.

2                HEARING OFFICER GEFTER:    And then you  
3        would have an automatic mutual aid agreement?

4                THE WITNESS:    That's correct.

5                HEARING OFFICER GEFTER:    And could you  
6        describe that, please.

7                THE WITNESS:    Well, and I want to  
8        stipulate the difference between automatic and  
9        mutual aid, because people get confused.    The idea  
10       of mutual aid is it's an agreement between  
11       jurisdictions, and we have a statewide master  
12       mutual aid agreement that we're all signators to.

13               The idea is that when you utilize all of  
14       the resources or the majority of the resources  
15       within your jurisdiction to fight some sort of a  
16       fire, then you can call on your neighbors for  
17       assistance and they will provide any number of  
18       resources, depending upon their availability and  
19       the numbers of resources that they have available.

20               The difference between mutual aid and  
21       automatic aid is that, in the case of automatic  
22       aid, we would call a different jurisdiction we  
23       have an automatic aid agreement with, and they  
24       would respond, even though we may have resources  
25       available.    Their resources may be closer to the

1 scene and we would actually jointly respond to an  
2 incident.

3 So it's the timing of when the resources  
4 are called. Automatic aid, you get the resources  
5 at the initial report, whatever the type of  
6 incident it is. Mutual aid, you've got your  
7 resources on the scene, you're requesting more  
8 resources, and then other jurisdictions provide  
9 those resources to you, if that -- I hope that  
10 clarifies.

11 HEARING OFFICER GEFTER: So automatic  
12 aid in this case would make more sense, if there  
13 were an emergency at the FPL plant and if the  
14 Tracy Fire Department could get there sooner, then  
15 they would automatically go, and then you would go  
16 there when you got there; is that correct?

17 THE WITNESS: That's correct.

18 HEARING OFFICER GEFTER: Okay.

19 THE WITNESS: But we would not not  
20 respond, because it is in Alameda County. We  
21 would initiate our response, but we would also  
22 request assistance from Tracy to augment that  
23 response.

24 And we do that today with any number of  
25 jurisdictions, including the Tracy Fire

1 Department, on freeways and for wildland fires.

2 HEARING OFFICER GEFTER: Chief Fragosa,  
3 was that also part of this agreement you have?

4 WITNESS FRAGOSA: That's correct, and if  
5 I may add, the way the automatic aid is actually  
6 handled, it's actually programmed into the  
7 computer, so when the dispatch gets the  
8 information during an emergency, it automatically  
9 shows it to dispatch both agencies simultaneously  
10 so there is no delay in the response time.

11 HEARING OFFICER GEFTER: So both  
12 agencies get the call and you both go.

13 THE WITNESS: Exactly.

14 HEARING OFFICER GEFTER: I wanted to go  
15 over the response times that are listed in Staff's  
16 testimony in Exhibit 53, page 17. It's a table  
17 that Dr. Greenberg has prepared, and he lists  
18 response times and what it looks like here is, is  
19 the first responder to station A 8?

20 THE WITNESS: Yes.

21 HEARING OFFICER GEFTER: Okay, and that  
22 station 8 as first responder, the response time is  
23 20 minutes?

24 THE WITNESS: Yes, without code 3.

25 HEARING OFFICER GEFTER: Okay.

1           THE WITNESS: But understand that code 3  
2           is the bells and sirens, and would be a lot  
3           quicker. But when I traversed this table for the  
4           captain, Captain Moore of the Alameda County Fire  
5           Department, we do not go code 3. You don't go  
6           code 3 unless there is truly an emergency. And so  
7           we stop at all the stop signs and obey all of the  
8           traffic laws. So those are maximum times.

9           HEARING OFFICER GEFTER: And how much  
10          time do you think it would take if you had code 3?

11          THE WITNESS: Probably five minutes.

12          HEARING OFFICER GEFTER: Okay. In that  
13          situation, if there were a call, would both  
14          agencies then respond, would you use the automatic  
15          aid approach?

16          WITNESS FRAGOSA: Yes.

17          HEARING OFFICER GEFTER: Okay, is  
18          that --

19          WITNESS MCCAMMON: Yes, we would.

20          HEARING OFFICER GEFTER: All right,  
21          because it says here that the Tracy Fire  
22          Department station 94 could get there in five  
23          minutes and that, again, is without code 3. So  
24          can you get there faster than five minutes?

25          WITNESS FRAGOSA: Not necessarily. Even



1 at code 3 between our station and the site, there  
2 is no traffic impact that would slow us down. I  
3 think there are maybe a couple of traffic lights.  
4 Other than that, it's a straight shot.

5 HEARING OFFICER GEFTER: So you would  
6 estimate --

7 THE WITNESS: So code 2 or code 3, it  
8 would save us a minute at the most. Other than  
9 that, it would be pretty close to about the same  
10 travel time.

11 HEARING OFFICER GEFTER: Five minutes.  
12 So what I am looking for here is whether this  
13 agreement or this arrangement between the two  
14 jurisdictions can be drafted into a condition for,  
15 in relation to this project.

16 STAFF COUNSEL HOUCK: Staff can draft a  
17 condition if there is concurrence by all parties  
18 and the parties that would be providing fire aid  
19 are in agreement with that.

20 HEARING OFFICER GEFTER: Applicant?

21 APPLICANT COUNSEL GALATI: Yes, we want  
22 to say that we would have difficulty with that,  
23 and let me try to summarize why.

24 We would have difficulty with it being a  
25 condition of us. You can make the condition that

1 we are to give the money to Alameda County, and  
2 Alameda County and City of Tracy, it should be up  
3 to them what they're going to do with it since it  
4 is not necessary, from our perspective nor from  
5 Staff's perspective, that that money even be  
6 provided or that agreement be in.

7 So if you want to have a condition that  
8 would say show documentation that you've given the  
9 money to Alameda County and then report back what  
10 Alameda County did, we probably could accept that,  
11 but I don't think we could take any responsibility  
12 for making sure money gets to Tracy.

13 STAFF COUNSEL HOUCK: And Staff has not  
14 found an impact that's being mitigated, so it  
15 would have to be a stipulation. I don't think  
16 Staff would feel comfortable requiring mitigation  
17 where an impact hasn't been found.

18 HEARING OFFICER GEFTER: I think that  
19 Mr. Galati's proposal would be helpful because it  
20 would set some guidelines for all of the parties,  
21 and particularly would indicate to the concerned  
22 citizens of Tracy what the intended plan is.

23 So even though in this case you're not  
24 necessarily mitigating an impact, you're actually  
25 enhancing the ability of the Tracy Fire Department

1 to participate, and I think that would be a useful  
2 condition to have.

3 STAFF COUNSEL HOUCK: And just to  
4 clarify, when I said that Staff wouldn't require a  
5 condition when an impact is not found, that also  
6 means we wouldn't require a condition if there  
7 wasn't a LORS noncompliance, but we would do that  
8 if we felt there was one.

9 APPLICANT COUNSEL GALATI: And if I  
10 could just state for the record, again, we do  
11 encourage the money to go to the City of Tracy for  
12 the City of Tracy's needs and we're delighted to  
13 hear about the talks and didn't want to give the  
14 impression that we don't want the City of Tracy to  
15 get the money. That's not our intention in any  
16 way, shape or form.

17 We just don't know if we have much  
18 control over how that happens.

19 HEARING OFFICER GEFTER: That's fine.  
20 If the Fire Department representatives could work  
21 with Staff and the Applicant to provide some  
22 language and a condition that reflects, to the  
23 extent you can, what this agreement is, it would  
24 be helpful.

25 STAFF COUNSEL HOUCK: And we would be

1 willing to work with the parties to do that.

2 HEARING OFFICER GEFTER: Then let's do  
3 that.

4 Chief McCammon, did you have additional  
5 comments?

6 WITNESS MCCAMMON: No.

7 HEARING OFFICER GEFTER: Anything else  
8 on Fire and Protection?

9 Okay. Do you have some cross-  
10 examination?

11 INTERVENOR SARVEY: Yeah.

12 HEARING OFFICER GEFTER: All right.

13 INTERVENOR BOYD: Why don't you let me  
14 go first, Bob, since you're going to take longer.

15 HEARING OFFICER GEFTER: Mr. Boyd?

16 Oh, wait a minute, before we do that, do  
17 you want to move your exhibits?

18 STAFF COUNSEL HOUCK: Yes. Staff would  
19 like to move Exhibit 51, section 4.4; Exhibit 52,  
20 section 2.14; Exhibit 53, pages 16 through 18; and  
21 Exhibit 68, the Alameda County Fire Department  
22 comments on the revised PMPD for the East  
23 Altamonte Center in the record.

24 HEARING OFFICER GEFTER: Any objection?

25 APPLICANT COUNSEL GALATI: No objection.

1 HEARING OFFICER GEFTER: Do the  
2 Intervenors have any objection?

3 INTERVENOR SARVEY: Yeah, I object to  
4 Alameda County's Fire Department comments on the  
5 RPMPDI. I'd just like to say in terms of I don't  
6 see how it's relevant to this case. That's my  
7 only objection.

8 STAFF COUNSEL HOUCK: If Staff can  
9 respond, Staff believes they're relevant in that  
10 the issues that were raised in the East Altamonte  
11 Energy Center are the same issues that have been  
12 raised in this proceeding regarding potential  
13 mutual aid agreements and the jurisdictional  
14 issues regarding who is to serve the facility in  
15 the event that a fire was to occur. And we would  
16 ask that they be submitted into the record.

17 HEARING OFFICER GEFTER: I think the  
18 discussion of the jurisdictional issues is  
19 relevant to this case too, so your objection is  
20 overruled.

21 The exhibit can be received into the  
22 record, and at this point Exhibit 68 and all of  
23 the other exhibits identified by Ms. Houck related  
24 to Worker Safety and Fire Protection are received  
25 into the record.

1 (Thereupon Exhibit 68 and portions of  
2 Exhibits 51-53 were received into evidence.)

3 HEARING OFFICER GEFTER: And now,  
4 Mr. Boyd, would you like to cross-examine the  
5 witnesses?

6 INTERVENOR BOYD: Yeah, I had some  
7 questions.

8 CROSS-EXAMINATION

9 BY INTERVENOR BOYD:

10 Q You were talking about a water tenderer  
11 and there was another piece of equipment you were  
12 talking about. What was the other piece of  
13 equipment?

14 HEARING OFFICER GEFTER: Who are you  
15 addressing?

16 WITNESS MCCAMMON: A bulldozer.

17 HEARING OFFICER GEFTER: I'm sorry, are  
18 you addressing this to Chief McCammon?

19 INTERVENOR BOYD: Yes.

20 HEARING OFFICER GEFTER: All right.

21 CROSS-EXAMINATION

22 BY INTERVENOR BOYD:

23 Q My question is do you have, like, a  
24 dollar value for those two pieces of equipment,  
25 what they would be?

1           A     I don't have final dollar amounts. It's  
2     between \$500-600,000, probably. I was getting  
3     some numbers from Chief Fragosa today and I don't  
4     have the final numbers from our own work to get  
5     the estimates on what it would cost.

6           Q     So I don't follow, if they're giving you  
7     \$500,000 and it costs \$600,000, where is the other  
8     hundred grand coming from for the equipment?

9           A     Well, that's something that Alameda  
10    County will work out with Florida Power, I'm sure.

11          Q     Okay. And then my other question is has  
12    there been any kind of formal agreement or any  
13    written agreement between Tracy Fire and Alameda  
14    County Fire on this, or is that a possible  
15    scenario in the future, that there would be some  
16    written agreement that we could, like, say, okay,  
17    even though this isn't --

18          A     Yes.

19          Q     -- necessarily dealing with what the  
20    Applicant's -- I'm trying to deal with what the  
21    Applicant is concerned with, which is that they  
22    don't really care. It's not their issue, it's our  
23    issue, so if -- so there is an intent that there  
24    might be some kind of formal agreement that we  
25    could look towards?

1           A     Yes. On our part, there is an intent to  
2 formalize an agreement with the Tracy Fire  
3 Department. Because there are going to be issues  
4 around how dispatch goes and there are things that  
5 we would want to include in that agreement, and we  
6 have several of those agreements with other  
7 jurisdictions we respond with, so we would want to  
8 do something similar to that.

9           Q     Okay. My other question is for  
10 Dr. Greenberg. You were talking about the  
11 likelihood of fire at the facility and basically  
12 the low probability of that type of thing  
13 occurring. I was wondering if you were aware of  
14 the fire they had at Moss Landing about a month  
15 and a half ago.

16          A     Yes, Mr. Boyd, I am very much aware of  
17 it.

18          Q     And do you know how many fire crews out,  
19 how many different crews, different counties had  
20 to respond to that fire and details, how long it  
21 took to put out, that kind of stuff? That was a  
22 bunker fuel fire, as I understand.

23          A     You're quite correct, sir, it was. And,  
24 you know, there is not going to be any bunker fuel  
25 at this power plant.



1 Q Oh, I understand.

2 A That was --

3 Q The fuel was explosive, in any case.

4 A That was left over from the time that  
5 Moss Landing was first commissioned and was  
6 burning bunker fuel. It no longer does. It's not  
7 going to be burning it at all. And to liken a  
8 fire there to a fire at a natural gas-fired power  
9 plant, which is not going to have that type of  
10 bunker oil or fuel stored in any significant  
11 amount is like comparing apples and oranges.

12 We can speak to responses to fires at  
13 similar facilities, but I don't think it would  
14 really be a good service to discuss fires with  
15 completely different circumstances at a different  
16 facility.

17 Q But it was a fire at a power plant.

18 A Well, you know, actually, Mr. Boyd, you  
19 can argue that if it happens near a power plant  
20 but it's a storage area adjacent to the power  
21 plant, it had nothing to do with the functional  
22 operation of that power plant, one could make that  
23 argument.

24 Q And were you aware of any automatic fire  
25 suppression that was at that site at that fire?

1           A     No, there were not automatic fire  
2 suppression systems on the fuel storage tanks.

3           Q     Okay.

4           A     But fuel storage tanks proposed for the  
5 Tesla facility --

6           Q     In your opinion, is natural gas more or  
7 less combustible than bunker fuel?

8           A     Oh, natural gas is very combustible.  
9 There is no natural gas stored at the Tesla  
10 facility. Now, there is a certain amount in the  
11 pipelines, but what happens when you have a  
12 natural gas fire is you don't put it out, you shut  
13 off the valve, and then it goes out. And whatever  
14 is burning left in the pipeline. You don't fight  
15 a natural gas fire with putting foam on it. You  
16 shut it off.

17           INTERVENOR BOYD: Okay, that's all my  
18 questions. Thank you.

19           HEARING OFFICER GEFTER: Mr. Sarvey?

20           INTERVENOR SARVEY: Well, I'm glad to  
21 hear the chiefs are getting along again. That's  
22 good news.

23                   CROSS-EXAMINATION

24           BY INTERVENOR SARVEY:

25           Q     Chief McCammon, in the East Altamonte

1 proceedings, did you request mitigation from  
2 Calpine, or was that something they just came and  
3 offered you?

4 A Those were things that were offered to  
5 us.

6 Q Okay. So there was no request for  
7 mitigation?

8 A No.

9 Q Okay. Mr. Greenberg, according to your  
10 testimony on page 18 --

11 HEARING OFFICER GEFTER: Could I ask  
12 which exhibit? Exhibit 53?

13 INTERVENOR SARVEY: Exhibit 53, I'm  
14 sorry, the middle of the page where it says  
15 Response.

16 BY INTERVENOR SARVEY:

17 Q You testified that CEC, public health  
18 and the unused Staff are unaware for any plans for  
19 development between Tracy and the Tesla site and  
20 no plans for any development in the -- Well, let's  
21 just stop right there, that there are no plans for  
22 any development between Tracy and the Tesla site;  
23 is that your testimony?

24 A Yes, that is my testimony. As we  
25 discussed earlier this afternoon, my understanding

1 in talking with the CEC Land Use staff and the  
2 information that we have both received from Tracy,  
3 that the Tracy Hills development is southwest of  
4 the site along Corral Hollow Road and 580  
5 intersection, and that, therefore, there is no  
6 planned development between City of Tracy and the  
7 Tesla Power Plant site.

8 Q Earlier when I asked you if you were an  
9 expert on the Tracy Peaker Project and you said  
10 that you were, you said that you were aware of the  
11 South Schulte Project, which is directly between  
12 the Tesla Power Project and Tracy. Are you  
13 changing your testimony there?

14 A No. Are you changing the location of  
15 the Schulte development? Is that within the town  
16 of Tracy or outside the town of Tracy?

17 Q It's between Tracy and the Tesla Power  
18 Plant, which is what I read to you --

19 A So I guess we got caught in semantics.  
20 I thought you were referring to, perhaps, the  
21 greater town of Tracy and the sphere of influence  
22 of Tracy. But I also think it's probably a little  
23 bit north of where you think it is. But  
24 obviously, we have a disagreement as to what is  
25 the definition of "between Tracy."

1 I consider that development to be part  
2 of Tracy.

3 Q And when you consulted with Land Use  
4 staff for the Tesla Power Project, did they show  
5 you the reasonably foreseeable development  
6 projects chart?

7 A Yes, I looked at the Land Use section of  
8 the FSA, final staff assessment.

9 Q And on that chart did you see the auto  
10 auction facility?

11 A Are we talking about neighborhoods?  
12 That's what I --

13 Q We're talking about just development  
14 between City of Tracy and the Tesla Power Plant.

15 A Well, I'm --

16 Q It was actually a question for the  
17 Hearing Officer at the preconference hearing, and  
18 I think you might have misinterpreted it, but --

19 A I interpreted it as residential  
20 neighborhood, her question, not as building  
21 anything at all.

22 Q Okay. We'll let that go.

23 Earlier you mentioned there was an  
24 explosion, a gas pipeline explosion last year.  
25 Can you identify the operator of that project?

1 A A gas pipeline explosion?

2 Q Yeah.

3 A I don't believe I said anything about a  
4 gas pipeline explosion.

5 Q So are you aware that there was a gas  
6 pipeline explosion at a peaker plant in Fairfield  
7 in October?

8 STAFF COUNSEL HOUCK: I would object to  
9 relevance.

10 INTERVENOR SARVEY: Well, he just made  
11 the statement that there wasn't gas line  
12 explosions, they weren't dangerous places. I'm  
13 just trying -- the relevance is --

14 STAFF COUNSEL HOUCK: What statement? I  
15 don't know what statement you're referring to.

16 INTERVENOR SARVEY: Well, he implied  
17 earlier that a gas-fired power plant wasn't a  
18 dangerous place, and I'm just trying to point out  
19 that it is.

20 HEARING OFFICER GEFTER: Well,  
21 Mr. Sarvey, is there a particular explosion that  
22 you are referring to?

23 INTERVENOR SARVEY: Mm-hmm, yeah, at the  
24 Wolfskill Peaker Plant -- actually, it's referred  
25 to in the decision, East Altamonte Energy Center.

1 HEARING OFFICER GEFTER: Why don't you  
2 identify it. Okay, but why don't you just specify  
3 what explosion you're talking about and then ask  
4 Dr. Greenberg a specific question.

5 INTERVENOR SARVEY: Okay.

6 BY INTERVENOR SARVEY:

7 Q Dr. Greenberg, are you aware that there  
8 was an explosion at the Wolfskill Peaker Plant in  
9 Fairfield that belonged to Calpine?

10 A Yes.

11 Q Okay. Now we're getting somewhere.  
12 That's the first "yes" I've gotten, okay.

13 HEARING OFFICER GEFTER: And,  
14 Mr. Sarvey, could you tell us what the relevance  
15 of that question is.

16 INTERVENOR SARVEY: The relevance is I'm  
17 trying to establish that natural gas-fired power  
18 plants are very, very dangerous facilities. I  
19 think that Staff in their analysis has extremely  
20 underplayed the hazardous aspects of the facility,  
21 and I think it's very important that everybody  
22 understands that, the Committee understands that.  
23 I'm just trying to point out that perhaps Staff's  
24 analysis is flawed in that area.

25 HEARING OFFICER GEFTER: Do you have

1 another question on this topic?

2 INTERVENOR SARVEY: Yeah, I do. Would  
3 you rather I just did it under Public Comment?

4 HEARING OFFICER GEFTER: No, you can  
5 cross-examine the witness. I want to know if  
6 you're going to, this line of questioning  
7 regarding natural gas explosions. Do you have any  
8 other questions on that line?

9 INTERVENOR SARVEY: Oh, no, that was the  
10 only question I had on natural gas explosions.

11 HEARING OFFICER GEFTER: Okay. You may  
12 continue your cross-examination.

13 INTERVENOR SARVEY: Okay.

14 BY INTERVENOR SARVEY:

15 Q Now, the Tesla Power Plant and the East  
16 Altamonte Energy Center are similarly situated as  
17 far as impacts and such. Is there any difference  
18 in your analysis between the Tesla Power Project  
19 and the East Altamonte Energy Center that you  
20 could identify?

21 HEARING OFFICER GEFTER: Could you  
22 repeat that question?

23 BY INTERVENOR SARVEY:

24 Q The Tesla Power Plant and the East  
25 Altamonte Energy Center are very similar plants.



1 They're over 1100-megawatt natural gas-fired power  
2 plants. Is there any part of your analysis that  
3 is different between those two projects?

4 HEARING OFFICER GEFTER: With respect to  
5 what?

6 STAFF COUNSEL HOUCK: I would object. I  
7 don't know that there has been an actual  
8 comparison of the two facilities --

9 INTERVENOR SARVEY: That's okay, I'll  
10 just go under Public Comment, that's okay. I'm  
11 really happy the chiefs are getting along and  
12 we're settling this, and I'll just speak under  
13 Public Comment because I can tell that probably my  
14 cross-examination is not welcome, thank you.

15 HEARING OFFICER GEFTER: It's not that  
16 it's not welcome, Mr. Sarvey, it's just that we  
17 need to narrow your scope of questioning.

18 So you're ending your cross-examination?

19 INTERVENOR SARVEY: Prematurely, yes.

20 HEARING OFFICER GEFTER: Okay. Well,  
21 you're welcome to continue.

22 INTERVENOR SARVEY: Oh, I just want to  
23 go under Public Comment, that's all.

24 STAFF COUNSEL HOUCK: I do have a  
25 redirect question.

1 HEARING OFFICER GEFTER: You want to  
2 redirect? All right.

3 REDIRECT EXAMINATION

4 BY STAFF COUNSEL HOUCK:

5 Q Dr. Greenberg, could you please  
6 elaborate on your previous testimony regarding the  
7 potential risk of an incident or the danger that  
8 would occur to the community regarding a potential  
9 natural gas fire at a facility such as the Tesla  
10 Power Plant?

11 A I'd be happy to, because I certainly  
12 don't want to leave the impression that gas-fired  
13 power plants are 100% totally safe. I think  
14 Intervenor Sarvey perhaps misconstrued or I didn't  
15 make clear my opinion. And it's not that there is  
16 not a danger there. The danger is very well  
17 recognized and it is very highly regulated to the  
18 point where the risks are insignificant, below a  
19 level of significance.

20 The risks would be there if there were  
21 not all of this mitigation. There are a number of  
22 LORS -- laws, standards, ordinances,  
23 regulations -- that address power plants and  
24 natural gas-fired power plants. And accidents do  
25 happen. There have been injuries and there have

1       been some fires.

2               But if we compare the workings of a  
3       natural gas-fired power plant to other natural  
4       gas-fired power plants that are in existence  
5       today, we find that the mitigation that is  
6       required by law and that is proposed by the  
7       Applicant reduces the risk not to zero, but below  
8       a level of significance.

9               And we take very seriously worker safety  
10       and fire protection and hazardous materials  
11       response at these facilities, which is why there  
12       are a number of conditions of certification and a  
13       number of laws and ordinances that they have to  
14       follow.

15               I've tried to point out, however, that  
16       at modern gas-fired power plants certified by the  
17       Energy Commission, the accidents are kept to a  
18       minimum, and that the responses by fire  
19       departments are at a minimum. It's not like  
20       they're going out there every week.

21               HEARING OFFICER GEFTER: Any further  
22       redirect?

23               STAFF COUNSEL HOUCK: No further  
24       redirect.

25               HEARING OFFICER GEFTER: Mr. Sarvey, are

1       you ready to make some public comment? And I also  
2       have a blue card from Mrs. Sarvey on the same  
3       topic of Worker Safety and Fire Protection.

4               We'll let Mr. Sarvey begin making public  
5       comment.

6               MR. SARVEY: First of all, I am very  
7       troubled by Staff's analysis of this project and  
8       the other projects, and I want to say once again  
9       I'm really glad the fire departments are getting  
10      along, and I trust that what has been said here  
11      will be carried out as a condition of  
12      certification. That makes me very happy.

13              But I think Staff needs to take a very  
14      good look at their analysis, and I'm going to read  
15      to you from the East Altamonte Energy Center, and  
16      this is the final Commission decision:

17              "The Committee is troubled by the rigor  
18      of the analysis performed on this topic and by  
19      certain assertions by individuals. Staff argues  
20      that power plants in general rarely require off-  
21      site firefighting response as a result of lack of  
22      burnable materials at the power plant. This  
23      statement is perplexing, since this plant is a  
24      natural gas-fired power plant and, as such,  
25      consumes 5,000 to 7,200,000,000 BTU an hour of

1 natural gas. That's 600-800 PSIG through a  
2 dedicated pipeline.

3 "The plant contains several lubricating  
4 oil tanks which will contain 30,000 gallons of  
5 flammable lubricating oil during normal  
6 operations. The plant is also equipped with a  
7 number of electrical transformers and oil contact  
8 breakers that are filled with a combined total of  
9 100,000 gallons of insulating and combustible oil.  
10 These amounts of combustible materials are  
11 significant, and the associated risks should not  
12 so lightly be dismissed.

13 "The record also indicates that Staff  
14 relies on a survey of the Applicant's 13 power  
15 plants as the basis for concluding the need for  
16 EMS response is also minimal. The Committee feels  
17 it is important to recognize the difference  
18 between risk and response. Risk is the  
19 probability of an event occurring times the  
20 magnitude of the event. Response is the actions  
21 that would be taken given that that event,  
22 regardless, has occurred.

23 "In our conclusion, Applicant and Staff  
24 in their analysis, have both emphasized the  
25 former, low-risk, at the expense of the latter

1 response. The Committee feels that risk  
2 associated with the construction and operation of  
3 the East Altamonte Energy Center need to be  
4 acknowledged, managed and properly mitigated.

5 "Power plants are inherently hazardous  
6 places. When these hazards are acknowledged and  
7 mitigated through measures, equipment and  
8 training, risks can be reduced to an acceptable  
9 level. Ignoring or inappropriately minimizing the  
10 risk sows the seeds for accidents, injuries or  
11 even fatalities. It can also lead to complacency  
12 and underpreparedness for response, which is  
13 unacceptable to this committee and a potential  
14 disservice to the community at large.

15 "Recent experience at the Southern  
16 California Edison Vincent substation and the  
17 Calpine Wolfskill peaker are current examples  
18 that, in spite of an operator's best intentions  
19 and maintenance practices, errors do occur and  
20 equipment does fail, sometimes disastrously and  
21 with significant consequences. Catastrophic  
22 events can and do occur over the life of a power  
23 plant. The Committee is not persuaded by either  
24 the Applicant's survey or Staff's assessment of  
25 the risk.

1           "Applicant, Alameda County Fire  
2     Department and Staff agree on estimates of  
3     response times. While we could agree that the  
4     response times are comparable for a rural area,  
5     the region is quickly becoming urbanized, and is  
6     already impacted by urban traffic patterns; hence,  
7     we believe that the agreed-upon response times are  
8     optimistic.

9           "As an example, it may not always be the  
10    case that a hazardous material response coming  
11    from San Leandro could be made in 35 minutes  
12    during the height of the rush hour, as claimed by  
13    Alameda County Fire Department. As a result, the  
14    Committee concludes that Alameda County Fire  
15    Department may, from time to time, have to rely on  
16    other such entities such as Tracy Fire Department  
17    to provide emergency response to East Altamonte  
18    Energy Center and/or be the first responder under  
19    mutual aid agreements."

20           Now, the reason I read that into the  
21    record is I'm asking Staff the next time they  
22    approach a power plant that they realize that  
23    there are impacts to the community and they are  
24    very large impacts and they can be catastrophic  
25    events. And I don't want to trivialize, I don't

1 want to minimize, I want Staff to approach this in  
2 the serious manner that it is.

3 And these gentlemen here, they know.  
4 They probably never fought a fire at a 1160-  
5 megawatt power plant, but I'm sure they would be  
6 very hesitant to send their boys in there without  
7 the proper equipment and training. So I just,  
8 like I said, once again, I'm really glad that the  
9 departments are getting along and I thank you very  
10 much.

11 HEARING OFFICER GEFTER: Thank you.

12 Mrs. Sarvey?

13 MRS. SARVEY: Susan Sarvey, Clean Air  
14 for Citizens and Legal Equality.

15 As a taxpayer in Tracy who has to  
16 support my fire department, I would request a  
17 condition that requires for a Pierce Haz Mat Saver  
18 Encore truck be provided to the Tracy Fire  
19 Department so they can provide haz mat and  
20 confined-space rescue. They're within five  
21 minutes of the plant, as was previously stated.  
22 The other responses are at least a half an hour  
23 away. Especially in a confined-space issue, that  
24 could be really hard on the person in that space.

25 And, in terms of haz mat, it's my



1 community that will feel it first. I would like  
2 to put in the record this newspaper article  
3 written by Scott Ridder, the former UN weapons  
4 inspector, about how they are putting a biolab at  
5 Lawrence Livermore Lab on fast track, and the  
6 biolab problems that they've had, in terms of  
7 terroristic things, in terms of biological  
8 warfare, have come from within, not from without.

9 So I highly want him to stay in his yard  
10 and take care of me, because I don't want anthrax  
11 or legionella or any whatever other cootie he's  
12 making over there coming into my town. I want him  
13 to just take care of his space.

14 California Department of Forestry is  
15 only there May through October or November. We  
16 need to have response, and Tracy Fire has been  
17 sending their men to training and collecting  
18 equipment. We do not have a vehicle that can take  
19 us to the scene to respond adequately.

20 As a taxpayer, I did not ask for these  
21 power plants. They are being given to me. I have  
22 a hundred solar panels at my house. I do not need  
23 this power plant to run my pool, my house or  
24 anything else, and everybody on my block seems to  
25 be getting solar panels. It's blowing my mind,

1       how many people are putting them up.

2               So this is for, I think, the Bay Area,  
3       most of this power, quite frankly. And I don't  
4       see why I should have to foot the bill as a  
5       taxpayer. So I would ask for a condition that  
6       provides the haz mat vehicle for Tracy to save  
7       lives and protect my community, the water  
8       tenderer, and I would reiterate, I think we should  
9       be compensated for our manpower, fuel, and  
10      maintenance of our vehicles if we have to respond.  
11      This can be a very expensive proposition.

12             Now, if they don't want to do that,  
13      that's fine. Maybe buying the haz mat vehicle and  
14      the water tenderer makes it all equal, and I could  
15      live with that. But if we don't get the haz mat  
16      vehicle and the water tenderer, they surely should  
17      be made to repay my community for our manpower,  
18      our maintenance and our fuel. And the only way to  
19      protect my community is if you make this a  
20      condition.

21             So I'm going to give to the Public  
22      Adviser the cost sheet from the company that is  
23      selling the vehicle that we need for our haz mat  
24      and confined-space rescue response. I'm going to  
25      give her the newspaper article from the UN

1 inspector about the future problems at the lab,  
2 and the man from the Department of Forestry, he  
3 can tell you if he intends to be there 12 months  
4 out of the year. I don't think so.

5 Thank you very much. I hope you give me  
6 my condition.

7 HEARING OFFICER GEFTER: I'm going to  
8 ask Chief Fragosa, if you can back up and speak to  
9 the need for this haz mat responder truck.

10 WITNESS FRAGOSA: Yes. As far as a haz  
11 mat truck, it was one of the pieces of equipment  
12 that we've been discussing with Alameda County.  
13 And it is a little more expensive than the water  
14 tenderer, not that much, and if it's one piece of  
15 equipment, I'm not hung up on one or the other.

16 I think that either one of them would  
17 help mitigate issues in that area and we've said  
18 all along, we would have rather be negotiating  
19 equipment and helping us to provide some type of  
20 services for the impact that we would be incurring  
21 for this type of situation.

22 HEARING OFFICER GEFTER: So you're  
23 satisfied with this water tenderer vehicle?

24 THE WITNESS: Either/or.

25 HEARING OFFICER GEFTER: Either/or,

1       okay. And that is still in discussion, then?

2               I'm sorry, Chief McCammon?

3               WITNESS MCCAMMON: Well, I'd just like  
4       to make a couple of comments generally about,  
5       people use the term "haz mat response" fairly  
6       easily, and that's why I brought Assistant Chief  
7       Rich Brown with me this evening, because saying  
8       you have a haz mat vehicle and then saying you  
9       actually have a haz mat response team are two  
10      completely different things.

11              There are state and federal guidelines  
12      about the operation of hazardous materials  
13      response teams. We have 42 members of our  
14      department that are trained to a high level to  
15      maintain daily staffings, because if you initiate  
16      some sort of a haz mat response, it requires  
17      minimum staffing levels to do anything.

18              So we felt that it was better for our  
19      haz mat team to be there and to be able to get  
20      some support from the Tracy Fire Department in  
21      those areas where their training benefits us, and  
22      to use the water tenderer because it's something  
23      that we would use on a regular basis, both the  
24      Tracy Fire Department and the Alameda County Fire  
25      Department, and really provides a better benefit

1 to this part of eastern Alameda County and western  
2 San Joaquin County.

3 HEARING OFFICER GEFTER: And does  
4 Assistant Chief Brown have anything to add to  
5 that?

6 WITNESS BROWN: In addition to that, a  
7 piece of equipment does not make a team, just  
8 like -- to reiterate what Chief McCammon has said.

9 As far as training goes, ongoing  
10 training, the standards they meet, the hours of  
11 training just to get to a response level is 480  
12 hours per person, 24 hours a year continuing  
13 training on top of that.

14 OSHA recommends that you have nine  
15 people to make a level A entry if there was a  
16 hazardous material confined-space entry that was  
17 needed. That's something that the Alameda County  
18 Fire Department could provide without impact to  
19 other day-to-day operations.

20 And with Alameda County being able to  
21 provide those people who have those trained hours  
22 in combination with the City of Tracy, just  
23 providing firefighters for decontamination, water  
24 tenderer operations and so on, bringing out  
25 portable water for that operation would just

1       enhance our whole system.

2               HEARING OFFICER GEFTER:   And would this  
3       system work with this automatic aid agreement that  
4       you are now putting in place?

5               THE WITNESS:   Absolutely.

6               HEARING OFFICER GEFTER:   Could you give  
7       us a scenario, hypothetical scenario if there were  
8       a haz mat spill or some crisis at the Tesla plant,  
9       who would respond first and what would happen?

10              THE WITNESS:   Every firefighter within  
11       Alameda County is trained to an operational level.  
12       Our incident commanders, because of that, have to  
13       be trained to a haz mat IC level.   They would be  
14       responding with our station aid, that would be our  
15       initial response, along with a complete haz mat  
16       response from the Castro Valley area, coming in  
17       with six individuals who are trained specialists.

18              That would be enough to fulfill the need  
19       for a level A entry.   That's a fully encapsulated  
20       type suit to go into to mitigate a problem or to  
21       rescue somebody.   One of the things that would  
22       work well with that is that, with our response  
23       going into that Tracy Fire could set up a decon  
24       quarter, which is required before we can actually  
25       do a stepoff in encapsulated suits.   That takes

1 time to set up.

2 And these things are all required  
3 through federal law, state law, and county. So  
4 everything would work together hand in hand.

5 WITNESS MCCAMMON: Let me just, if I can  
6 clarify a little bit, the other thing about  
7 hazardous materials response incidents is that  
8 they aren't like fires, where you have this  
9 picture of a fire, you have firefighters running  
10 in quickly to put the fire out. The first  
11 arriving crews to a haz mat incident isolate and  
12 deny entry to the area. They try and keep anyone  
13 that could walk into that area out of that area,  
14 and then they wait for the haz mat response team  
15 to get there, and then they set up operations to  
16 do whatever they need to do.

17 These incidents go on for hours, because  
18 of the complexity of getting the team there and  
19 all the things that go into meeting all of the  
20 federal and state guidelines that you have to  
21 operate in those areas. So you have to think of  
22 it as a longer-term incident, but the initial  
23 response that came from our jurisdiction and Tracy  
24 would be to isolate and deny entry to the  
25 immediate area where the incident occurred.

1           HEARING OFFICER GEFTER: And in the  
2 event of a fire, then, would the mutual aid -- I'm  
3 sorry, would the automatic aid agreement, if the  
4 Tracy Fire Department got there first, would Tracy  
5 then take charge until Alameda County got there,  
6 or how would that work?

7           THE WITNESS: They would initiate, based  
8 on the number of people that they had on the  
9 scene, they would initiate some sort of  
10 firefighting, whether it would be to establish a  
11 water supply, do an initial attack, depending upon  
12 the numbers of people, and again, the initial  
13 documents I gave you, there are some again federal  
14 OSHA guidelines related to two in and two out.

15           So for every two people we put into an  
16 interior firefighting situation, we have to have  
17 two people outside that could be capable to go in  
18 and rescue those people. So they may not be able  
19 to initiate much of an interior attack, but once  
20 our resources got there, then together we would do  
21 that.

22           HEARING OFFICER GEFTER: Chief Fragosa,  
23 do you agree with that scenario?

24           WITNESS FRAGOSA: Yeah, except for the  
25 station that we're talking about that would be



1 making the primary search is scheduled to go on  
2 line with a second engine company that basically  
3 is established to serve the Mountainhouse, and  
4 probably within the next 12 months we'll be  
5 operating at a two-engine company two-man level  
6 and then scheduled, once Mountainhouse station is  
7 built, to a three-man station with ALS services on  
8 that engine company.

9 So we would end up having initially five  
10 people, two engine response within a year.

11 HEARING OFFICER GEFTER: From now?

12 THE WITNESS: From now.

13 HEARING OFFICER GEFTER: Is  
14 Mountainhouse closer than your station 94?

15 THE WITNESS: No, it's probably I would  
16 say eight to ten minutes, five minutes after the  
17 first one.

18 HEARING OFFICER GEFTER: So station 94  
19 is about a five-minute response time, and the new  
20 Mountainhouse --

21 THE WITNESS: Should be about eight to  
22 nine minutes.

23 HEARING OFFICER GEFTER: Right, so that  
24 would be your backup?

25 THE WITNESS: Yes. That would be the

1 first second engine, and we presently have gone  
2 into an automatic aid agreement also with Lawrence  
3 Livermore Lab for their 300 site, which would be  
4 coming out of the Corral Hollow Canyon up on 580,  
5 and they would also be in assistance with us.

6 We presently have 12 individuals who are  
7 trained at what Chief Brown was talking about at  
8 the specialist level. We also belong to a  
9 countywide team. But presently what San Joaquin  
10 County is lacking is equipment to initiate a type  
11 of response and mitigation effort like Chief Brown  
12 is talking about of having that equipment and  
13 being able to man it without having to utilize a  
14 full-county response team at the time.

15 HEARING OFFICER GEFTER: Well, I think  
16 what I need from Dr. Greenberg is perhaps an  
17 update of your table on page 17 on your  
18 Exhibit 53, page 17. You have a table that lists  
19 the first responders out of County station number  
20 eight, and, in fact, there is a new location here,  
21 which we ought to have that in the record, as well  
22 as where the new location will be and what the  
23 address is.

24 WITNESS GREENBERG: That would only --  
25 The new location, which would be on Greenville

1 Road, would only be if East Altamonte is built and  
2 Calpine gives its mitigation.

3 HEARING OFFICER GEFTER: Oh, okay. So  
4 we need to indicate that on this table because  
5 that's not clear.

6 THE WITNESS: Okay.

7 HEARING OFFICER GEFTER: And then you  
8 have Alameda County station four from Castro  
9 Valley for their haz mat response, and you have  
10 Tracy station number 94. And Chief Fragosa also  
11 indicated there would be a new station in  
12 Mountainhouse which would be a backup to station  
13 number 94.

14 And is Mountainhouse part of that  
15 automatic aid agreement? Would that be part of  
16 the automatic aid agreement, using the  
17 Mountainhouse station?

18 WITNESS FRAGOSA: The automatic aid  
19 includes all of Tracy Fire. Basically, when we  
20 have one unit in an emergency, especially like  
21 Mountainhouse, which would be a community that is  
22 isolated, we would initiate move-up from within  
23 our own department to start covering those spaces  
24 as they opened up.

25 HEARING OFFICER GEFTER: So could we add

1       that, the Mountainhouse station to the table and  
2       indicate what a response time would be?

3               WITNESS GREENBERG:   As a future station?

4               HEARING OFFICER GEFTER:   As a future  
5       station, because Chief Fragosa indicated within  
6       one year from now it should be -- Will it be built  
7       within one year?

8               WITNESS FRAGOSA:   I believe so.   The  
9       initial plans are coming out of the county from  
10      Tri-Mark developers, that they've already started  
11      the process, the permit process.

12              HEARING OFFICER GEFTER:   Okay.   And then  
13      we need some more information about the automatic  
14      aid agreement, and perhaps that can be included in  
15      language for condition that talks about the water  
16      tenderer truck and the arrangement that the  
17      Applicant has with Alameda County.

18              All right.   Is there anything else on  
19      Fire?   Okay.   Are there any members of the public?  
20      Ms. Mendonca has a couple of comments from members  
21      of the public.

22              PUBLIC ADVISER MENDONCA:   Thank you.  
23      Both of my commenters were here earlier in the day  
24      and were unable to remain for the full discussion.

25              Carol Dominguez, a local resident,

1 states, "Please understand that the citizens of  
2 Tracy have a high level of respect and admiration  
3 for our fire department. They are dedicated  
4 professionals and, if called upon for fire and  
5 emergency services for the Tesla plant, they are  
6 likely to be first responders due to the location  
7 of the plant.

8 "Although the plant is located in  
9 Alameda County, the owners of the plant and the  
10 Energy Commission have a moral obligation to  
11 ensure appropriate mitigation to Tracy Fire  
12 Department to offset the future expense to the  
13 department. Tracy city officials may not be  
14 representative of our citizens to this end,  
15 because they have abandoned their own moral  
16 compass by denying the negative impacts to our  
17 city of the plants you have approved.

18 "What more would you expect from a City  
19 Council that has doubled the population of our  
20 city in ten years' time, and, moreover, is moving  
21 forward with a plan to put our young children on  
22 soccer and baseball fields on the front line of  
23 the GWF peaker plant? Obviously, quality of life  
24 is not a high priority.

25 "The City of Tracy's singular concern is

1 to convey treated wastewater to Tesla, which is a  
2 goal I support. But in doing so, the City's fear  
3 of alienating the Commission and the owners of the  
4 plant has caused them to abdicate their duty to  
5 protect the citizens from harm.

6 "The citizens must then be the voice of  
7 advocacy for the Tracy Fire Department. East  
8 Altamonte's failure to appropriately mitigate  
9 Tracy Fire Department does not set a precedent for  
10 the Tesla project. It does, however, send the  
11 message of disregard to our community, and I hope  
12 the Commission will now do everything in its power  
13 to avoid repeating that error.

14 "Tracy is the most impacted, yet least  
15 compensated entity. We are viewed as the 'cheap  
16 date' by the developers, because our city  
17 officials lack the conviction and savvy to demand  
18 what is due their citizenry; therefore, the  
19 citizens are depending on the Energy Commission to  
20 protect the interests of Tracy and require full  
21 mitigation to our fire department."

22 And the second comment came from Irene  
23 Sundberg on the topic of fire:

24 "I don't want my tax being spent on  
25 Alameda problems. I think our fire department

1       should have ample mitigation funding, since our  
2       residents will be the ones left out of the loop.  
3       I felt it is extremely important for mitigation  
4       fees to be imposed for the residents of Tracy,  
5       since we are the ones sucking up the fumes from  
6       Alameda County's power plants."

7               And all of the comments my office will  
8       docket and distribute.

9               HEARING OFFICER GEFTER:   Okay, thank  
10      you.

11              Are there any other public comments at  
12      this point on Fire Protection?   Yes?

13              PRESIDING COMMITTEE MEMBER GEESMAN:   I  
14      want to thank each of the chiefs for tearing up  
15      their dinner hours to spend this time with us  
16      tonight.   You've made our task substantially  
17      easier in this case, and I certainly salute the  
18      spirit with which you approach this.   Thank you.

19              HEARING OFFICER GEFTER:   I also want to  
20      thank you for being out here this evening and for  
21      giving us this information, because it certainly  
22      clears up our record as well.   Thank you very  
23      much, all of you.

24              At this point, the people who are here  
25      talking to us about fire protection are welcome to

1 leave, and we're going to wind down as well this  
2 evening. I have a couple of housekeeping matters.

3 Tomorrow morning we are going to finish  
4 testimony on Traffic and talk about, let's see, we  
5 had a couple of questions on Traffic. Ms. Houck,  
6 your witness on Traffic will be in tomorrow  
7 morning?

8 STAFF COUNSEL HOUCK: Yes, Eileen Allen,  
9 who is our witness for Land Use was also the  
10 supervisor, and her name is I believe on the  
11 Traffic and Transportation testimony, and she will  
12 be available first thing in the morning.

13 HEARING OFFICER GEFTER: Okay, and then  
14 we're going to go on to Land Use, and then Biology  
15 and then Water tomorrow.

16 STAFF COUNSEL HOUCK: And it is my  
17 understanding that Adolph Martinelli will be here  
18 from Alameda County for Land Use.

19 HEARING OFFICER GEFTER: On Land Use,  
20 all right. And then we still have a couple of  
21 topics that remain open: Haz Mat and language for  
22 Haz 12, and also Traffic and Transportation  
23 remains open, as we indicated, and also Fire  
24 Protection remains open for drafting of that  
25 condition that we discussed this evening.



1 Does anyone have anything else to add?

2 INTERVENOR SARVEY: I had a little  
3 housekeeping thing I'd like to deal with. I've  
4 got four exhibits, 86, 87, 88 and 89, that contain  
5 isopleths that were generated by Energy Commission  
6 staff, and I'd like to have a Staff representative  
7 here to explain those isopleths, since I seem to  
8 be having trouble getting my information here on  
9 the record, so I would like to make that request.

10 HEARING OFFICER GEFTER: Okay. Is that  
11 related to Air Quality?

12 INTERVENOR SARVEY: Yes, it is, so  
13 probably the 18th would be sufficient.

14 STAFF COUNSEL HOUCK: And just to  
15 clarify, there are a number of graphs in here and  
16 I'll apologize to Mr. Sarvey in advance, but  
17 they're not labeled where they came from. I  
18 understand from prior discussion that I believe  
19 they were from the East Altamonte Center, but I am  
20 going to talk to Staff and if they're the  
21 documents in another staff document that's  
22 available to the public, we can address them.

23 But I just want to state at this point  
24 they're not labeled and I'm not sure exactly which  
25 ones he was referring to that were Staff

1 documents. There are a number that are sort of  
2 scattered throughout the exhibit, so I would just  
3 like clarification.

4 HEARING OFFICER GEFTER: Okay. We could  
5 do that off the record and then you could work  
6 with Mr. Sarvey on that.

7 Mrs. Sarvey, do you have a public  
8 comment, because we're about to wind down here.

9 MRS. SARVEY: In relation to the  
10 isopleths that are in the record, I requested that  
11 information in public comment at the East  
12 Altamonte Plant siting case and the Air Quality  
13 staff responded to all my questions, and these are  
14 the documents they gave me in response to my  
15 questions.

16 HEARING OFFICER GEFTER: Thank you for  
17 clarifying that.

18 Ms. Mendonca?

19 PUBLIC ADVISER MENDONCA: Yes. I have  
20 two general public comments on Fire Safety. One  
21 is supported from community resident Ben Curra,  
22 C-u-r-r-a, and he would address costs. He said:

23 "My concern is that the three-year  
24 process and mitigation fees will be passed on to  
25 users. No one wants nuclear power, drilling off-

1 shore or 'anwar,' but all need energy. The energy  
2 grid is fragile, as demonstrated over the past two  
3 years. Tracy still grows, and energy sources are  
4 needed," and he is supportive of the project.

5 And then I have some random comments  
6 from a resident, Paul Sundberg. He addresses the  
7 topic of power, air pollution and I will see that  
8 those comments are docketed. His general position  
9 is to oppose the facility.

10 HEARING OFFICER GEFTER: Thank you very  
11 much.

12 The hearing is adjourned for this  
13 evening. We will see each other tomorrow morning  
14 at 9:00 a.m.

15 (Whereupon, at 7:38 p.m., the hearing  
16 was adjourned, to reconvene at  
17 9:00 a.m., Thursday, September 11, 2003,  
18 at this same location.)

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## CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Hearing; that it was thereafter  
transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
hearing, nor in any way interested in outcome of  
said hearing.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 22nd day of September, 2003.

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